

CONTRACT #5
RFS # 331.04-002
FA # 05-16382-00

Education

VENDOR:
Xap Corporation

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Nicole Cobb	*Contact Phone:	615-741-5113		
*Contract Number:	FA-05-16382-00	*RFS Number:	331.04-002-05		
*Original Contract Begin Date:	May 01, 2005	*Current End Date:	April 30, 2010		
Current Request Amendment Number: (if applicable)	2				
Proposed Amendment Effective Date: (if applicable)	July 01, 2009				
*Department Submitting:	Department of Education				
*Division:	Teaching and Learning				
*Date Submitted:	April 23, 2009.				
*Submitted Within Sixty (60) days:	Yes				
If not, explain:	N/A				
*Contract Vendor Name:	Xap Corporation				
*Current Maximum Liability:	\$4,095,750.00				
*Current Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY:2005	FY:2006	FY:2007	FY:2008	FY:2009	FY:2010
\$5,000.00	\$1,382,333.00	\$748,429.68	\$793,791.98	\$808,077.16	\$357,938.18
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from STARS or FDAS report)					
FY:2005	FY:2006	FY:2007	FY:2008	FY:2009	FY:2010
\$0.00	\$1,255,000.00	\$292,500.00	\$1,052,749.00	\$385,706.00	
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		The contract with Xap Corporation established per hour rates for items such as training, web developer work, and programmer work. The State has not needed to take full advantage of the funds allocated for these additional services resulting in a surplus. Allocated funds not used have remained in the Lottery Scholarship fund.			
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		Surplus funds for this contract have not carried forward. TDOE is reimbursed for expenditures paid to Xap Corporation. The availability for surplus funds does carry forward.			
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:					

Supplemental Documentation Required for
Fiscal Review Committee

*Contract Funding Source/Amount:	State:	\$31,697.84	Federal:	\$0.00
Interdepartmental:		\$4,658,052.16	Other:	\$0.00
If "other" please define:			N/A	
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>			Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
5/27/2007			Amendment 1 added comprehensive interactive test preparation courses for the SAT, ACT, and GRE standardized tests to CollegeforTN.org. Amendment 1 also added basic career planning resources for high school students to the site.	
Method of Original Award: <i>(if applicable)</i>			RFP	
Include a detailed breakdown of the actual expenditures anticipated in each year of the contract. Include specific line items, source of funding, and disposition of any excess fund. <i>(if applicable)</i>			Please see the attached breakdown of actual expenditures anticipated.	
Include a detailed breakdown, in dollars, of any savings that the department anticipates will result from this contract. Include, at a minimum, reduction in positions, reduction in equipment costs, reduction in travel. <i>(if applicable)</i>				
Include a detailed analysis, in dollars, of the cost of obtaining this service through the proposed contract as compared to other options. <i>(if applicable)</i>				

Supplemental Documentation Required for Fiscal Review Committee

Detailed breakdown of the Actual Expenditures Anticipated

Deliverables	
Deliverable 1 – June 2009 Up to 100,000 transcripts to TSAC	\$163,909.00/deliverable
Deliverable 2 – June 2009 Annual fee for up to 500,000 students	\$287,254.00/deliverable
Deliverable 3 – June 2009 Annual fee for up to 500,000 students	\$109,273.00/deliverable
Deliverable 4 – October 2009 –Xap Transitions Premium Edition	\$594,000.00/deliverable
Train the Trainer Classes:	
Year 5	\$2750.00/class
Additional Support Services:	
Web Developer	\$90.00/hour
Programmer	\$145.00/hour
Project Manager	\$210.00/hour

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Vendor V954610552 Xap

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4/15/2009

Page by:
Vendor Number: V954610552

Effective Month	Allotment Code	Cost Center Code	Cost Center Funding Year	Reference Document Number	Reference Document Suffix	Vendor Invoice	Grant/Sub-Grant Code	Grant/Sub-Grant Sub Code	Grant/Sub-Grant Title	Cash Expenditures
SEPTEMBER 2008	331.04	23601		FA0516382	01	70922			BLANK - FIELD NOT USED	0.00
SEPTEMBER 2008	331.04	23601		FA0516382	01	70921			BLANK - FIELD NOT USED	0.00
SEPTEMBER 2008	331.04	23601		FA0516382	00	70921			BLANK - FIELD NOT USED	0.00
SEPTEMBER 2008	331.04	23601		FA0516382	01	70922			BLANK - FIELD NOT USED	279,616.00
SEPTEMBER 2008	331.04	23601		FA0516382	01	70921			BLANK - FIELD NOT USED	49,869.66
SEPTEMBER 2008	331.04	23601		FA0516382	00	70921			BLANK - FIELD NOT USED	56,220.34

EXPENDITURES PAID IN FY 2009

TOTAL EXPENDITURES PAID

385,706.00
2,985,955.00



RECEIVED

APR 23 2009

FISCAL REVIEW

PHIL BREDESEN
GOVERNOR

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
6th FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

TIMOTHY K. WEBB, Ed.D.
COMMISSIONER

TO: James White, Fiscal Review Committee
FROM: Timothy K. Webb, Commissioner of Education *Timothy K. Webb*
DATE: April 21, 2009
RE: Request to appear before Fiscal Review Committee regarding Request for Non-Competitive Contract Amendment RFS #331.04-002-05

For your review and consideration, enclosed is a request for non-competitive contract amendment between the Department of Education and Xap Corporation, Inc.

In partnership with the Tennessee Higher Education Commission and the Tennessee Student Assistance Corporation, the TDOE has managed the contract with Xap Corporation, Inc. since 2005. The requested non-competitive contract amendment will impact the remainder of the contract, until spring 2010. As the fiscal agent, TSAC holds the financial liability for the total of the contract and this amendment.

The proposed contract amendment will allow Xap Corporation, Inc. to revise, upgrade and enhance the state sponsored college and career mentor website, www.CollegeforTN.org. Development and plans for implementation will commence immediately following the start date specified on an approved contract amendment.

Features and functions of an upgraded college and career mentor website will include a professional center for elementary, middle and high school counselors, increased state control of information and content, four and six-year academic planning tools, and a career exploration center based on the 16 career clusters and research-based career assessments which links to postsecondary opportunities across Tennessee.

Thank you for your consideration.

CC: Mr. Robert Greene
Mr. Bruce Opie
Dr. Connie Smith
Kristen McKeever

NON-COMPETITIVE AMENDMENT REQUEST:

APPROVED

Commissioner of Finance & Administration

1) RFS #	331.04-002-05	RECEIVED
2) Procuring Agency :	Department of Education	APR 23 2009
EXISTING CONTRACT INFORMATION		FISCAL REVIEW
3) Service Caption :	Xap Transitions Premium Edition	
4) Contractor :	Xap Corporation	
5) Contract #	FA-05-16382-00	
6) Contract Start Date :	May 01, 2005	
7) CURRENT Contract End Date : (if ALL options to extend the contract are exercised)	April 30, 2010	
8) CURRENT Maximum Cost : (if ALL options to extend the contract are exercised)	\$4,095,750.00	
PROPOSED AMENDMENT INFORMATION		
9) Amendment #	2	
10) Amendment Effective Date : (attached explanation required if < 60 days after F&A receipt)	July 1, 2009	
11) PROPOSED Contract End Date : (if ALL options to extend the contract are exercised)	April 30, 2010	
12) PROPOSED Maximum Cost : (if ALL options to extend the contract are exercised)	\$4,689,750.00	
13) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
14) Description of the Proposed Amendment Effects & Any Additional Service :		
<p>The Tennessee Department of Education (TDOE), Tennessee Student Assistance Corporation (TSAC), and Tennessee Higher Education Commission (THEC) procured a solution from Xap Corporation to provide a broad avenue of access to Tennessee education opportunities beyond high school in May, 2005. The resulting system (see www.CollegeforTN.org) is designed especially for use in Tennessee and allows users (students in grades 8 – 12, parents, guidance counselors, GEAR UP professionals) to access college-planning services in the web-based portal through a single log-on and password.</p> <p>TDOE, TSAC and THEC are seeking the proposed amendment to contract with Xap Corporation. Currently, the www.CollegeforTN.org site functions using Xap Corporation's Mentor product. The proposed amendment would upgrade the site to the Xap Transitions Premium Edition product. The Transitions product includes the functionality inherent in the Mentor product with the addition of a set of new features that includes the Choices Planner career planning functionality. Additionally, the intended audience of the site will be expanded to include Middle School and Elementary School students with the additions of Choices Explorer and Paws In Jobland. Transitions will also include a Professional Center that provides school personnel with tools that enable better tracking, reporting and accountability of students regarding their career, high school, college and financial aid planning. This upgrade to CollegeforTN.org will include a site redesign that will align with a broad-based communication outreach campaign</p>		

being administered by the Tennessee Higher Education Commission.

Specific and unique features of the Xap Transitions Premium Edition include:

Career Planning: Xap Transitions Premium Edition incorporates the Bridges Choices career exploration products into the existing Mentor structure to create a more integrated career exploration experience for Tennessee students. Assessments for Middle School and High School students will include an Interest Profiler, Career Cluster Survey, Basic Skills Survey, Transferable Skills checklist, and Work Values Sorter. Career exploration resources also include career search and matching functionality organized around the career clusters as determined by the U.S. Department of Labor. Elementary School students will have access to age appropriate career exploration tools via the Paws in Jobland product. Paws in Jobland and the accompanying career exploration curriculum will be the first comprehensive, statewide career resource offered to Elementary School educators and students in Tennessee. The career exploration resources found in Xap Transitions Premium Edition change dependent on the age of the user ensuring that students from kindergarten through grade 12 have a career exploration experience customized to their needs and age level.

High School Planning: The High School Planning portion of Transitions will include a planning timeline and a personalized plan of study. The planning timeline outlines what students and parents should be doing throughout a student's high school career in order to effectively plan for college. The new personalized plan of student will allow students to make four or six year plans that outline the course a student will take. Local districts and schools will have the ability to customize course offerings, course sequences, and options for the personalized plan of study of students that attend their particular school or district.

College Planning: Transitions offers college planning resources that will allow students to explore all the institutions eligible to receive Tennessee Education Lottery Scholarship funds. Students will be able to browse through Tennessee schools, view program/major profiles, read article about getting ready for college, participate in test prep and apply to college. The State will be able to customize and add content providing students with information about how to plan and prepare for their postsecondary educations.

Financial Aid Planning: Financial aid resources include financial aid calculators, an Expect Family Contribution (EFC) calculator, a personalized financial plan tool and scholarship search tools. Additional content will also be provided outlining financial aid information in a section called Financial Aid 101. The State will have the ability to customize and supplement the financial aid and financial literacy information provided on the site so that it is applicable to Tennessee students and reinforces the Tennessee Student Assistance Corporations programs.

Life-long Portfolio: Students will be provided with a personal portfolio that will house all outcomes of activities participating in on the site including career, high school, college and financial aid planning activities. A student will be able to manage items such as the careers they are interested in along with the postsecondary institutions to which they have applied. A journal is provided that can be used by students to record their exploration experiences or by teachers as an avenue to turn in writing assignments. Students will be able view comments left by school counselors to students individually via the portfolio. A Guideways system is also included that give students a sequence of activities to participate in that is most appropriate to their grade level. Students will also be able to view Milestones, a list of assignments assigned by school personnel, and manage their progress in fulfilling those Milestones. The profile also offers an event calendar and an email tool.

Professional Center: The Professional Center will give designated school personnel access to the accounts of all students who attend their school. Educators will have the ability to segment students in a variety of ways (i.e. grade level, last name, career interests, etc) in order to maximize use. Educators will be able to track student's progress on Milestone and Guideways. Messages and event notices can be sent to individual student accounts. School personnel will be able to upload and send transcripts through the Professional Center. User-friendly reports are available in the Professional Center to better track, engage and keep students accountable. Sample reports would include a list of students who are interested in majoring in Biology, which students have applied to college, students who have not yet completed a personalized plan of study. The Professional Center will provide educators with tools to more efficiently manage student's career, high school, college and financial aid planning. Additionally, school district and state level educators will be able to obtain aggregate data regarding student usage and outcomes.

Cost increase for the addition of the Xap Transitions Premium Edition will be \$594,000.

Currently, Tennessee does not offer any career development resources for elementary age students. Career exploration and development is part of the state board approved standards for school counselors in grades K-12. This addition will provide elementary counselors a research based program to meet the career guidance standards with their students. Also needed are the student academic four, six and life-long planning tools. As Tennessee works to implement new, more rigorous academic content and high school graduation standards, the school administrators, parents and students need tools to aid in education planning and decision making. If Tennessee is going to reach its goals of decreasing the number of high school drop-outs, increasing graduation rates, decreasing enrollment in remedial postsecondary classes, and double the number of citizens ages 18-26 with an Associate's degree or higher we must afford school systems, students and families the opportunity to access and enroll in postsecondary institutions. These career and academic planning tools further the State's mission of increasing human and economic development and further students' opportunities to envision and plan for their future.

16) Name & Address of Contractor's Current Principal Owner(s) : (not required for a TN state education institution)

Xap Corporation
3534 Hayden Avenue
Culver City, CA 90232

17) Office for Information Resources Endorsement : (required for information technology service; n/a to THDA)

Documentation is ... ☐ Not Applicable to this Request ☒ Attached to this Request

18) eHealth Initiative Endorsement : (required for health-related professional, pharmaceutical, laboratory, or imaging service)

Documentation is ... ☒ Not Applicable to this Request ☐ Attached to this Request

19) Department of Human Resources Endorsement : (required for state employees training service)

Documentation is ... ☒ Not Applicable to this Request ☐ Attached to this Request

20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

In partnership with THEC, TDOE conducted a review of on-line, K- 12 career development resources and were unable to find another company with equivalent services at the same or lower cost. Upon identifying Tennessee's needs and Xap's unique programmatic benefits, such as the elementary career guidance component leading into middle school and high school focused features and planning tools, staff members secured references from peer states via phone conversations and networking opportunities at conferences. Overwhelming, Xap is the preferred vendor of states working to make large gains in high school graduation, college enrollment and degree production. It is important to also highlight, Xap is the only company we found offering an elementary career guidance component.

21) Justification for the Proposed Non-Competitive Amendment :

There are several reasons which justify the State's position in requesting a non-competitive contract with XAP Corporation instead of using a competitive process.

1. The State has found no other entities who offer the comprehensive array of services in the area of need by TDOE and the Tennessee school systems.
2. Xap Corporation has provided exemplary services for the State of Tennessee for several years; it has historical data, experience and background knowledge which all other vendors lack.
3. Xap extensively trained school administrators, school counselors and teachers across Tennessee and is well respected and well received by school districts. They have extensive knowledge of State Board Rules and Regulations as well as the content/curriculum standards required by Tennessee law for school counselors.

AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)

Timothy K. Webb

4/16/09

081607

**FAX/EMAIL TRANSMITTAL****to Request OIR Procurement Endorsement**

TO : Jane Chittenden, Director
OIR Procurement & Contract Management **FAX # 741-6164**

FROM : Kristen McKeever, Contracts Director **FAX # 253-5705**

DATE : 4/16/09

RFS # 331.04-002-05

RE : Procurement Endorsement — XAP Transitions Premium Edition

INFORMATION SYSTEMS PLAN PROJECT: N/A**NUMBER OF FAX PAGES (including cover) : N/A FOR EMAIL**

The nature and scope of service detailed in the attached service procurement document(s) appears to require Office for Information Resources (OIR) review and support, because the procurement involves information technology or information systems services.

This communication seeks to ensure that OIR is aware of the procurement and has an opportunity to review the matter. Please determine whether OIR is supportive of the procurement. If you have any questions or concerns about this matter, please call Kristen McKeever at 532-8539.

Please indicate below your response to this proposed procurement, and return this communication at your earliest convenience (note the return FAX number above).

Thank you for your help.

Attachment(s)

Must include the entire contract or amendment document and where applicable, the non-competitive contract or amendment request form. The original contract and any prior amendments that were applied to the same section of the contract must be provided with an amendment. Electronic copies of the contract, amendments, and request form without signature are acceptable.

RFP documents must be provided in electronic form.

OIR Endorsement :

Mark Bengel
OIR Chief Information Officer

4/17/09
Date



C O N T R A C T A M E N D M E N T

Agency Tracking # <div style="text-align: center;">331.04- 002-05</div>	Edison ID <div style="text-align: center;">000000000000000000000000002211</div>	Amendment # <div style="text-align: center;">02</div>
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Contractor XAP Corporation	Contractor Federal Employer Identification or Social Security # <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- V954610552-00
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Amendment Purpose/ Effects Addition of the XAP Transition Premium Edition

Contract Begin Date May 1, 2005	Contract End Date April 10, 2010	Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA #(s) N/A
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FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2005	\$0.00	\$0.00	\$5,000.00	\$0.00	\$5,000.00
2006	\$0.00	\$0.00	\$1,382,333.00	\$0.00	\$1,382,333.00
2007	\$31,697.84	\$0.00	\$716,731.84	\$0.00	\$748,429.68
2008	\$0.00	\$0.00	\$793,971.98	\$0.00	\$793,971.98
2009	\$0.00	\$0.00	\$808,077.16	\$0.00	\$808,077.16
2010	\$0.00	\$0.00	\$951,938.18	\$0.00	\$951,938.18
TOTAL:	\$31,697.84	\$0.00	\$4,658,052.16	\$0.00	\$4,689,750.00

— COMPLETE FOR AMENDMENTS —			Agency Contact & Telephone # John Sharp- 615.532.1658	
END DATE AMENDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred)	
FY	Base Contract & Prior Amendments	THIS Amendment ONLY		
2005	\$5,000.00	\$0.00		
2006	\$1,382,333.00	\$0.00		
2007	\$748,429.68	\$0.00		
2008	\$793,971.98	\$0.00		
2009	\$808,077.16	\$0.00		
2010	\$357,938.18	\$594,000.00		
TOTAL:	\$4,095,750.00	\$594,000.00	Account Code 70803000	

— OCR USE —

Procurement Process Summary (non-competitive, FA- or ED-type only)

The CollegeforTN.org initiative is a partnership between the Tennessee Department of Education, the Tennessee Higher Education Commission, and the Tennessee Student Assistance Corporation. All changes to the site or the contract with Xap Corporation require approval from each agency. Dr. Tim Webb, Commissioner of the Department of Education, approved the amendment to the Xap contract in December 2008. Dr. Richard Rhoda, Executive Director of the Higher Education Commission, and Mr. Jim Vaden, Associate Executive Director, Fiscal Affairs of the Higher Education Commission, approved the amendment in February 2009. Finally, funding was secured through the Tennessee Student Assistance Corporation in March 2009. Since late 2007, THEC staff members have worked extensively with Xap Corporation in negotiating the best possible terms and price for the upgrade of CollegeforTN.org to Xap Transitions Premium Edition. The negotiated price laid out in the amendment reflects a 33% savings from original list price of the upgrade

**AMENDMENT TWO
TO FA-05-16382-00**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Education, hereinafter referred to as the "State" and Xap Corporation, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The following provision is added as Contract Section A.II.D:

D. 4th Deliverable—by October 1, 2009

Provide implementation of the Xap Transitions Premium Edition solution. This upgrade of the existing portal, CollegeforTN.org, would include the current Mentor solution upgraded to Transitions Premium Edition. This comprehensive solution integrates the Xap developed education planning and college tools with Choices Planner's career planning features and functionality. Resources will be provided for Elementary School, Middle School and High School students and school personnel. Transitions Premium Edition will also include the current mentor features including online college applications, transcript exchange and test prep.

2. The following provision is added as Contract Section A. III.D:

D. 4th Deliverable—by October 1, 2009

The Contractor will provide the Xap Transitions Premium Edition solution which shall include the following functionality:

1. Career exploration tools for Elementary School, Middle School, and High School students. These tools will be age-appropriate and personalized to the age of the user. Assessments for Middle School and High School students will include an Interest Profiler, Career Cluster Survey, Basic Skills Survey, Transferable Skills checklist, and Work Values Sorter. Elementary School students will have access to age appropriate career exploration tools via CollegeforTN.org. Career exploration resources should also include career search and matching functionality organized around the career clusters as determined by the U.S. Department of Labor. The Career exploration tools will include the additions of Choices Explorer and Paws in Jobland.
2. High School planning resources that will include a planning timeline and a personalized plan of study. Local districts and schools will have the ability to customize course offerings, course sequences, and options for the personalized plan of study for their own students. The plan of study will have options for four year and six year planning.
3. College planning resources that will allow students to explore all the institutions eligible to receive Tennessee Education Lottery Scholarship funds. The State will be able to customize and add content providing students with information about their postsecondary options.
4. Financial aid resources that will include financial aid calculators, personalized financial plan tool and scholarship search tools. Additional content will also be provided outlining financial aid information. The State will have the ability to customize and supplement the financial aid and financial literacy information provided on CollegeforTN.org.
5. Students will be provided with a personal portfolio that ensures linkage between user interests, educational planning, milestone tracking and the college research, applications and transcript transfer process involved with selecting and attending a postsecondary educational institution.
6. Each public and private Elementary School, Middle School, and High School in Tennessee will be granted access to a professional center. The professional center shall provide school personnel comprehensive tools for tracking and reporting student activity and assessment results on CollegeforTN.org. School districts shall have access to the assessment and activity data of all the schools in their particular district. The State will have access to assessment and activity data of all students statewide.

7. A space for school counselor resources. The content of this space will be customizable by the State and will include transcript upload instructions, links to various counselor resources, etc.
3. The text of Contract Section C.1. is deleted in its entirety and replaced with the following:
- C.1 Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Four Million Six Hundred Eighty Nine Thousand Seven Hundred Fifty Dollars and No Cents (\$4,689,750.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials, or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contract or during any period of this Contract.
4. The text of Contract Section C.3. is deleted in its entirety and replaced with the following:
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

(The additional support services rates below shall constitute rate caps applicable only to any possible amendment and shall not apply to any deliverables specifically required in year one of the contract. Any such amendment shall specify applicable rates, not to exceed those detailed below.)

Service Description	Amount (per compensable amount)
Year 1	
Deliverable 1 – July 15, 2005 – Up to 70,000 transcripts to TSAC	\$500,000.00/deliverable
Deliverable 2 – Sept. 1, 2005 – Financial aid options & support	\$450,000.00/deliverable
Year 2	
Deliverable 1 – December 2005 – Up to 80,000 transcripts to TSAC	\$150,000.00/deliverable
- June 2006 – up to 80,000 transcripts to TSAC	\$150,000.00/deliverable
Deliverable 2 – Annual fee for up to 350,000 students	\$290,000.00/deliverable
Deliverable 3 – January 1, 2007 – Career Center and Test Prep Modules	\$46,229.00/deliverable
Year 3	
Deliverable 1 – December 2006 – Up to 90,000 transcripts to TSAC	\$154,500.00/deliverable
- June 2007 – Up to 90,000 transcripts to TSAC	\$154,500.00/deliverable
Deliverable 2 – Annual fee for up to 400,000 students	\$272,200.00/deliverable
Deliverable 3 – Annual fee for up to 400,000 students	\$103,000.00/deliverable
Year 4	

Deliverable 1 – December 2007 – Up to 100,000 transcripts to TSAC	\$159,135.00/deliverable
- June 2008 – Up to 100,000 transcripts to TSAC	\$159,135.00/deliverable
Deliverable 2 – Annual fee for up to 450,000 students	\$279,616.00/deliverable
Deliverable 3 – Annual fee for up to 450,000 students	\$106,090.00/deliverable
Year 5	
Deliverable 1 – December 2008 – Up to 100,000 transcripts to TSAC	\$163,909.00/deliverable
- June 2009 – Up to 100,000 transcripts to TSAC	\$163,909.00/deliverable
Deliverable 2 – Annual fee for up to 500,000 students	\$287,254.00/deliverable
Deliverable 3 – Annual fee for up to 500,000 students	\$109,273.00/deliverable
Deliverable 4 – October 2009 –Xap Transitions Premium Edition	\$594,000.00/deliverable
Train the Trainer Classes:	
Year 1	\$2,500.00/class
Year 2	\$2,500.00/class
Year 3	\$2750.00/class
Year 4	\$2750.00/class
Year 5	\$2750.00/class
Year 2 Additional Support Services:	
Web Developer	\$85.00/hour
Programmer	\$135.00/hour
Project Manager	\$200.00/hour
Year 3 Additional Support Services:	
Web Developer	\$85.00/hour
Programmer	\$135.00/hour
Project Manager	\$200.00/hour
Year 4 Additional Support Services:	
Web Developer	\$90.00/hour
Programmer	\$145.00/hour
Project Manager	\$210.00/hour
Year 5 Additional Support Services:	
Web Developer	\$90.00/hour
Programmer	\$145.00/hour
Project Manager	\$210.00/hour

- c. The Contractor shall not be compensated for travel time to the primary location of service provision.

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

5. The following provision is added as Contract Section D.20.:

D.20. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in

writing, by submitting to the State a completed and signed copy of the document at Attachment B, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

6. The following provision is added as Contract Section E.16.:

E.16. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.

- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
- b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
- c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a

Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

The revisions set forth herein shall be effective July 1, 2009. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

XAP CORPORATION:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF EDUCATION:

TIMOTHY K. WEBB, COMMISSIONER

DATE

ATTACHMENT B

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	FA-05-16382-00
CONTRACTOR LEGAL ENTITY NAME:	XAP Corporation
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	V954610552-00

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF ADMINISTRATION
312 EIGHTH AVENUE NORTH
SUITE 1200 WILLIAM R. SNODGRASS TENNESSEE TOWER
NASHVILLE, TENNESSEE 37243
PHONE: 615-741-6049 FAX: 615-532-2989

DAVE GOETZ
COMMISSIONER

MEMORANDUM

TO: Commissioner Lana C. Seivers
Department of Education
FROM: Commissioner Dave Goetz
Department of Finance and Administration
DATE: July 26, 2006
SUBJECT: RFS# 331.04-002-05

On May 17, 2006, the Department of Finance and Administration's Office of Contracts Review received a request (RFS# 331.04-002-05) from the Department of Education for a non-competitive amendment to Contract Number FA-05-16382-00 with the Xap Corporation. Under the proposed amendment, a private corporation will make available test preparation and career preparation modules for junior high and high school students.

The amendment request was subject to review by the Legislature's Fiscal Review Committee. After review, the Contracts Services Subcommittee voted on June 20, 2006 to recommend approval of the contract amendment, pending the requested Attorney General Opinion, and with the stipulation that the Department add benchmarks to the amendment. On June 21, 2006 the Fiscal Review Committee did not act on the recommendation due to lack of a quorum.

On June 22, 2006 the Department of Finance and Administration mistakenly approved the subject non-competitive request due to a misunderstanding of the conditional action by the Fiscal Review Committee.

In a July 20, 2006 memo from James W. White, Executive Director of the Fiscal Review Committee, the Department of Finance and Administration was informed that the Attorney General has since issued an opinion in response to the Subcommittee's request, Opinion No. 06-111, which states that the contract amendment involves a use of lottery proceeds that is not authorized by statutes implementing the Tennessee Education Lottery. Since the Subcommittee's condition for approval of the contract amendment has not been met, the contract amendment is not approved by the Subcommittee.

Due the above, please consider this letter as formally rescinding the Department of Finance and Administration's approval of the non-competitive amendment request. We apologize for any confusion this may have caused.



**GENERAL ASSEMBLY OF THE STATE OF TENNESSEE
FISCAL REVIEW COMMITTEE**

320 Sixth Avenue, North - 8th Floor
NASHVILLE, TENNESSEE 37243-0057
615-741-2364

Rep. Charles Curtiss, Chairman
Representatives

Harry Brooks	Mary Pruitt
Curt Cobb	Donna Rowland
Dennis Ferguson	David Shepard
Frank Niceley	Curry Todd
Craig Fitzhugh, <i>ex officio</i>	
Speaker Jimmy Naifeh, <i>ex officio</i>	

Sen. Don McLeary, Vice-Chairman
Senators

Mae Beavers	David Fowler
Jim Bryson	Steve Southerland
Steve Cohen	
Douglas Henry, <i>ex officio</i>	
Lt. Governor John S. Wilder, <i>ex officio</i>	

July 20, 2006

Mr. Robert Barlow, Director
Office of Contract Review
312 8th Avenue, North
12th Floor Tennessee Tower
Nashville, Tennessee 37243

RE: Contract Number FA-05-16382-00

Dear Robert:

At its meeting on June 20, 2006, the Contract Services Subcommittee gave conditional approval to the Department of Education's proposed amendment to its contract with Xap Corporation, subject to obtaining a favorable opinion from the Attorney General.

This letter is to notify you that the Attorney General has since issued an opinion in response to the Subcommittee's request, Opinion No. 06-111, copy attached, which states that the contract amendment involves a use of lottery proceeds that is not authorized by statutes implementing the Tennessee Education Lottery. Since the Subcommittee's condition for approval of the contract amendment has not been met, the contract amendment is not approved by the Subcommittee.

I have notified the Department of Education by separate letter. If you have any questions or would like additional information, please let me know.

Sincerely,

James W. White
Executive Director

STATE OF TENNESSEE

Office of the Attorney General



PAUL G. SUMMERS
ATTORNEY GENERAL AND REPORTER

MAILING ADDRESS

P.O. BOX 20207
NASHVILLE, TN 37202

ANDY D. BENNETT
CHIEF DEPUTY ATTORNEY GENERAL

LUCY HONEY HAYNES
ASSOCIATE CHIEF DEPUTY
ATTORNEY GENERAL

MICHAEL E. MOORE
SOLICITOR GENERAL

CORDELL HULL AND JOHN SEVIER
STATE OFFICE BUILDINGS

TELEPHONE 615-741-3491
FACSIMILE 615-741-2009

July 13, 2006

Honorable James W. White
Executive Director, Fiscal Review Committee
320 Sixth Avenue, North--8th Floor
Nashville, TN 37243-0057

RECEIVED

JUL 19 2006

FISCAL REVIEW

Dear Mr. White:

In response to your request, attached is opinion number 06-111. If you have further questions or comments, please contact this Office.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul G. Summers", written over a large, stylized circular flourish.

PAUL G. SUMMERS
Attorney General

Enclosure

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

July 13, 2006

Opinion No. 06-111

Use of Lottery Proceeds for Test Preparation Computer Modules

QUESTIONS

The Contract Services Subcommittee of the Fiscal Review Committee has been asked to review a contract amendment. Under the proposed amendment, a private corporation will make available test preparation and career preparation modules for junior high and high school students. The programs will be made available to the students at no charge through the Internet.

1. Do current Tennessee statutes authorize the use of proceeds from the Tennessee Lottery for this purpose?
2. Does Article XI, Section 5, of the Tennessee Constitution authorize the use of proceeds from the Tennessee Lottery for this purpose?

OPINIONS

1. No.
2. Because of the answer to Question 1, Question 2 is moot.

ANALYSIS

This opinion concerns whether proceeds from the Tennessee Lottery may be used to fund services provided under a proposed contract amendment. Under a current contract with the Tennessee Department of Education, Xap Corporation operates the "College for Tennessee" website. Through this website, high school students can review various colleges within the state and submit their transcripts to the Tennessee Student Assistance Corporation. State organizations can use this information to determine the students' eligibility for admissions to different post-secondary institutions. The system also enables students to learn about and apply for state and federal financial aid for post-secondary institutions of their choice. It appears that the Tennessee Higher Education Commission pays the Department of Education to operate the contract from lottery proceeds.

Under the amendment, Xap Corporation would add two additional services to the "College for Tennessee" web site. First, the corporation would add web-based test preparation services for the ACT, SAT, and GRE tests. These are standardized tests that post-secondary institutions use in

evaluating student applications for admission. Second, the corporation would provide a "career planning module." These programs would be available to all Tennessee students in grades 8-12, and adults seeking to re-enter college via the GRE. The site has no user access fees and is available twenty-four hours a day. The test preparation program would provide tutorials for subject areas of the three standardized tests, along with practice sessions and other features aimed at improving performance on the tests. The career planning module will assist students in evaluating their interests and qualifications for careers. We will refer to the services to be provided under the proposed amendment as "Preparation Services."

1. Statutes Governing Distribution of Lottery Proceeds

The first question is whether statutes governing the distribution of Tennessee Lottery proceeds authorize the use of such proceeds for this purpose. Under Article XI, Section 5, of the Tennessee Constitution, the legislature may authorize a state lottery:

if the net proceeds of the lottery's revenues are allocated to provide financial assistance to citizens of this state to attend post-secondary educational institutions located within the state. The excess after such allocations from such net proceeds from the lottery would be appropriated to:

- (1) Capital outlay projects of K-12 educational facilities; and
- (2) Early learning programs and after school programs.

Such appropriation of funds to support improvements and enhancements for educational programs and purposes and such net proceeds shall be used to supplement, not supplant, non-lottery educational resources for educational programs and purposes.

The General Assembly has exercised this authority and created the Tennessee Education Lottery Corporation to operate a state lottery. Tenn. Code Ann. §§ 4-51-101, *et seq.* Under Tenn. Code Ann. § 4-51-111, the Lottery Corporation is required to transfer net lottery proceeds to the state treasury, to be credited to the lottery for education account. The statute requires two reserve subaccounts. The General Assembly is authorized to appropriate net lottery proceeds for educational programs and purposes only in accordance with Article XI, Section 5, of the Tennessee Constitution. Tenn. Code Ann. § 4-51-111(c)(5).

The General Assembly has authorized three different educational programs that may be funded with lottery proceeds. The HOPE Scholarship Program operates under Tenn. Code Ann. §§ 49-4-901, *et seq.* It is administered by the Tennessee Student Assistance Corporation ("TSAC"), and the Tennessee Higher Education Commission, ("THEC") is charged with evaluating it. The General Assembly has also authorized lottery funds to be used for preschool programs, Tenn. Code Ann. §§ 49-6-101, *et seq.*, and after-school programs, Tenn. Code Ann. §§ 49-6-701, *et seq.* Clearly, the Preparation Services would not qualify as a preschool program. Further, the Preparation Services

do not appear to qualify as an after-school program. These statutes refer to programs in which students are to be enrolled. Tenn. Code Ann. § 49-6-702(c). The programs must also target students who are at an educational disadvantage for particular, specified reasons. *Id.* The Preparation Services do not appear to meet these qualifications. Recent legislation does authorize the use of lottery proceeds to fund six pilot programs that will prepare students to take the ACT or the SAT exams. 2006 Tenn. Pub. Acts Ch. 685. These programs, however, must target "at risk" students in grades seven through nine, and each program may serve no more than sixty students. The Preparation Services, therefore, are not an after school program authorized under current Tennessee statutes.

The question then becomes whether payment for the Preparation Services is authorized as part of the Hope Scholarship Program. Under this program, individual students apply directly for financial aid to attend Tennessee post-secondary institutions. Since the Preparation Services would be provided to Tennessee students generally, they are not a form of scholarship explicitly authorized under the Hope Scholarship Program. It appears that the only statute that might authorize the use of lottery funds to provide the Preparation Services is Tenn. Code Ann. § 49-4-924(e). Under that statute:

Costs incurred by TSAC and THEC in administering the educational programs created under this part, which provide financial assistance to enable citizens of this state to attend postsecondary educational institutions, shall be funded from the lottery for education account as part of such programs.

Tenn. Code Ann. § 49-4-924(e) (emphasis added). We think that the term "financial assistance" as used within this statutory scheme is limited to assistance that will help a citizen to pay the costs the citizen will incur to attend a post-secondary educational institution. Op. Tenn. Att'y Gen. 05-019 (March 4, 2005) (financial assistance may include payments to cover living expenses, including a housing allowance and an allowance for day care). The Preparation Services, while they might ultimately assist students in selecting and qualifying for admission to a post-secondary educational institution, are not "financial assistance" that will enable them to pay the costs they will incur to attend one. Nor do we think that providing the Preparation Services is an expense of administering the programs that provide such financial assistance. Unlike the services associated with the application process now provided under the contract, the Preparation Services are not a direct part of providing financial assistance to Tennessee students. For these reasons, Tennessee statutes do not authorize the use of net lottery proceeds to provide the Preparation Services.

The second question is whether Article XI, Section 5, of the Tennessee Constitution authorizes use of net lottery proceeds to provide the Preparation Services. Because of our answer to Question 1, this question is moot.

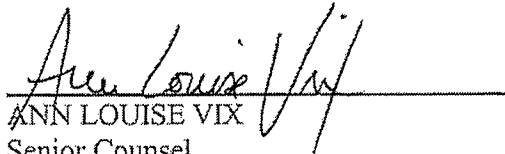
Page 4



PAUL G. SUMMERS
Attorney General



MICHAEL E. MOORE
Solicitor General



ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable James W. White
Executive Director, Fiscal Review Committee
320 Sixth Avenue, North--8th Floor
Nashville, TN 37243-0057

REQUEST: NON-COMPETITIVE AMENDMENT

C406
#350

8-29-05

APPROVED

bqqspwom st wpl e ons nt npx ebuf e 8037017

Commissioner of Finance & Administration

Date:

6-22-06

EACH REQUEST ITEM BELOW MUST BE DETAILED OR ADDRESSED AS REQUIRED.

1) RFS #

331.04-002-05

2) State Agency Name :

Department of Education

EXISTING CONTRACT INFORMATION

3) Service Caption :

Electronic Transcripts

4) Contractor :

Xap Corporation

5) Contract #

FA-05-16382-00

6) Contract Start Date :

May 01, 2005

7) Current Contract End Date IF all Options to Extend the Contract are Exercised :

April 30, 2010

8) Current Total Maximum Cost IF all Options to Extend the Contract are Exercised :

\$3,731,158.00

PROPOSED AMENDMENT INFORMATION

9) Proposed Amendment #

1

10) Proposed Amendment Effective Date :

(attached explanation required if date is < 60 days after F&A receipt)

July 1, 2006

11) Proposed Contract End Date IF all Options to Extend the Contract are Exercised :

April 30, 2010

12) Proposed Total Maximum Cost IF all Options to Extend the Contract are Exercised :

\$4,164,520.00

13) Approval Criteria :
(select one)



use of Non-Competitive Negotiation is in the best interest of the state



only one uniquely qualified service provider able to provide the service

14) Description of the Proposed Amendment Effects & Any Additional Service :

The Tennessee Department of Education (TDOE), Tennessee Student Assistance Corporation (TSAC), and Tennessee Higher Education Commission (THEC) recently procured a solution from Xap Corporation to provide electronic transcript services for the students in Tennessee. The resulting system (see www.CollegeforTN.org) is designed especially for use in Tennessee and allows users (students in grades 8-12, parents, guidance counselors, GEAR Up professionals) to access college-planning services in the web-based portal through a single log-in and password.

TDOE, TSAC and THEC are seeking the proposed amendment to contract with Xap Corporation to add its web-based test preparation

RECEIVED

(Test Prep) services for the ACT, SAT, and GRE test along with a career planning module to the current website with a total increase of \$433,362.00 to the maximum liability.

The test preparation and career planning module would be seamlessly integrated into the www.CollegeforTN.org website and would be available to all Tennessee students in grades 8-12, as well as adults seeking to re-enter college via the GRE. The site has no user access fees associated and there is unlimited, twenty-four (24) hour access.

Specific and unique features of the Xap *test preparation module* include:

Tutorials and Practice Sessions: The Xap test preparation module features user-friendly tutorials for each subject area/question type on the SAT, ACT and GRE. For the ACT these are: English, Reading, Science, Pre-Algebra, Algebra, and Geometry. SAT tutorials cover: Sentence Completions, Grammar, Essay Writing, Reading, Arithmetic, Algebra, Geometry, and Data Analysis. The GRE course contains tutorials in: Arithmetic, Algebra, Geometry, Data Analysis, Antonyms, Analogies, Sentence Completions, and Reading. Each tutorial provides between 30 and 90 minutes of instructional material. Tutorials are easy-to-use and are designed so that students may stop mid-way through and resume their work later.

The module also includes practice sessions that are designed to reinforce test-relevant skills by applying concepts presented in the tutorials to simulated test questions. Practice sessions dynamically adapt to each user's ability level, so that the most advanced students encounter the most difficult questions and less advanced students view less challenging questions. Each multiple choice question has unique feedback for each possible answer, designed to encourage students by offering hints and suggestions (for incorrect responses) and explanations (for correct answers). The students' performance during practice sessions generates a percentile ranking for each category. Percentile rankings are updated continuously, allowing students to assess their performance on a real-time basis. Students can access a database of over 500 questions for the ACT, and a database of over 800 questions each for the SAT and GRE.

Sample Tests: Timed sample tests for the SAT and ACT give students an indication of their performance level and pinpoint strengths and weaknesses. These sample tests also help students familiarize themselves with question format and layout. These sample tests are provided at no cost to users.

Vocabulary Builder: One of the most popular features of the module is a vocabulary builder, designed to broaden a student's verbal skills. The Vocabulary Builder contains more than 1,600 words. Like the practice sessions, it adapts to each student's ability level: those students with extensive verbal skills will see more difficult words, and vice-versa. Once a student has "mastered" a word it is stored on an electronic flashcard available for subsequent review.

Coaching System: Students are also able to elect a parent, teacher, or counselor as "coach" who will be able to monitor the student's performance and receive e-mail updates about the student's progress. Coaches can also log-in and view detailed reporting information on the student's activity on the site.

Daily Content: The module also includes a question of the day for each test, as well as a word of the day. This daily content can be integrated into classroom teaching strategies to encourage student users to visit the site frequently. Students can also elect to have this content e-mailed to them if desired.

Spanish Translation: The module even contains a Spanish translation of all its ACT and SAT tutorials, so that Spanish-speaking students can reinforce test-relevant skills in their native language.

Test-taking Tips: The sites provide students with an interactive game that teaches guessing strategies, as well as tips on time and stress management.

Specific and unique features of the Xap *career planning module* include:

Self Assessment: This section of the module will provide users with the opportunity to perform and interest self assessment. The results indicate the user's Holland personality types, which can be self-evaluated by the user or used in connection with the Career Matching Assistant, which is explained below.

Career Matching Assistant: This section of the module allows users to select from several parameters, including interest areas, highest education level anticipated, career clusters, work environment, general work activities, and abilities. The results indicate prospective careers, with links to career details, including career descriptions as well as related academic programs and colleges offering those academic programs within Tennessee. Users can store their results and review, or revise their searches at a later time. In addition, the Career Planner will provide a list of careers for users to search and links to valuable resources, including internships and volunteer information.

Additional Services: Through this module, users can search for careers that match their interests, education levels, and abilities on the U.S. Department of Labor's national careers database. This module will also link to sites on the Internet that offer information and background on careers, which include average salaries, and academic and training requirements.

15) Explanation of Need for the Proposed Amendment :

The addition of the test preparation and career planning modules to the current website is a natural progression in the scope of services to assist in meeting the project vision of providing students across the state with a broad avenue of access to Tennessee educational opportunities beyond high school. Due to our existing contract with Xap, choosing an alternative to host an online test preparation service could constrain our goals of achieving a "one-stop-shop" for all students to apply to college, send transcripts online and apply for financial aid. The main vision of this "one-stop-shop" is to measure gains in student access and participation in higher education opportunities across the state, without regard to socio-economic impacts or other factors. By using one source to provide these necessary services, all Tennesseans will benefit by the reduction of costs to the State, streamlining the process, and promoting one website for all students to use to access valuable information about post high school opportunities. The addition of the test preparation module will also allow the State to collect and analyze valuable data about student study habits, test preparation, and how these factors relate to actual test performance. By using Xap, these services would be delivered promptly, without conjecture of timelines or delays.

Cost increase for the addition of the test preparation and career planning modules is \$433,362.00 over the remaining four years of the current contract.

16) Name & Address of Contractor's Current Principal Owner(s) :

(not required if proposed contractor is a state education institution)

Xap Corporation
3534 Hayden Avenue
Culver City, CA 90232

17) Documentation of Office for Information Resources Endorsement :

(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

18) Documentation of Department of Personnel Endorsement :

(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

19) Documentation of State Architect Endorsement :

(required only if the subject service involves construction or real property related services)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

THEC has taken reasonable steps to evaluate online Test Preparation guides. There has been no real success in defining another system that properly integrates with the State's existing system, and offer the same depth provided by Xap. Alternatives would involve an external web link with Xap which could limit the productivity and access of the individual student. The original focus of the website was to allow students opportunity to gain greater access to higher education through convenient online access to submission of their transcripts and therefore provide students greater access to higher education, which is a main goal of this project and the Governor's intent.

THEC did not identify any providers that offered both a test prep and career planning module within one package.

The cost information of other online Test Preparation guides has been attached to this request for review. The cost comparison for 40,000 students per year is summarized below

Act Online Prep	Kaplan Test Prep	Xap
40,000/yr x \$20 x 4 yrs	40,000 x \$299 x 4 yrs	40,000/yr x 4 yrs
\$3,200,000.00	\$47,840,000.00	433,362.00

21) Justification for the Proposed Non-Competitive Amendment :

Governor Bradesen's interest in college entry test scores was recently noted in his budget hearings and how the scores have shown an improvement since the lottery's inception. He also added the state must do more to improve scores. Test preparation is a vital component to ensuring access to educational opportunities beyond high school for all Tennessee students and citizens.

Approximately 92% of Tennessee graduates take the ACT exam annually and, while the state's average ACT score has increased in

recent years, Tennessee's scores are still below the national average. The inclusion of the test prep module has the potential to increase ACT scores and provide students, across the state, greater access to a college education.

The Xap test preparation (Test Prep) and Career Planning modules level the playing field by providing these services to all socio-economic demographics. The test preparation and career planning modules can be included as part of a school's curriculum or as a stand-alone tool used by other college-readiness programs.

Test Prep is:

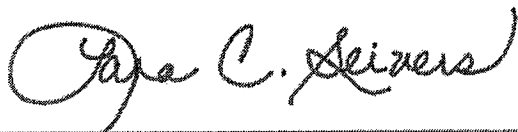
Integrated Solution – As the provider of the www.CollegeforTN.org portal, Xap can ensure the State of seamless integration of test prep within the portal. Seamless integration allows user profile data to be used across all modules, reducing data entry burden on users and ensuring greater accuracy of data across the system for TDOE, TSAC and THEC.

Experience – Xap Corporation has demonstrated experience providing comprehensive ACT, SAT and GRE test prep services, with no individual user fees, via statewide college-planning portals. Xap has designed and integrated test preparation services into the statewide college-planning portals in: North Carolina, Georgia, California, Wisconsin, Texas, and Utah. Xap Corporation is also under contract to design, develop and host a statewide test preparation service for the state of Oklahoma.

Results – Nearly 300,000 student accounts were created on Xap's test preparation services in calendar year 2005. In Pennsylvania, 63 seventh and eighth grade students attempting to qualify for a national gifted and talented program used the Xap test preparation service as part of a preparation program before taking the SAT. The student's total SAT scores were related to the amount of time spent studying on the site; linear regression models showed that students scored an additional 15 points per hour spent on the site, even after controlling for the effects of grade level, gender and pre-test scores.

REQUESTING AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)



5/17/06

Agency Head Signature

Date




PHIL BREDESEN
GOVERNOR

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
6th FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

LANA C. SEIVERS, Ed.D.
COMMISSIONER

To: Robert Barlow
Office of Contracts Review

From: Dr. Keith Brewer, 
Deputy Commissioner

Date: May 16, 2006

Re: Submissions of Requests for Non-Competitive Amendment with Authorized Signatory

Please consider the following Requests for Non-Competitive Amendment as officially submitted by Commissioner Lana C. Seivers. In the Commissioner's absence, I have been asked to approve the documentation that was submitted to your office on Friday, May 12, 2006 for review.

The Commissioner is aware of these requests and has given her approval on all of the following:

FA-04-15781
FA-04-15822
FA-05-16190
FA-05-16315

It was our intent to file these requests, along with supporting documentation, in a timely fashion to appear for questions from the Fiscal Review Committee on Monday, May 15, 2006

Thank you for your consideration of these requests.

CC: Dawn L. Darden, Fiscal Director
Timothy K. Webb, Assistant Commissioner



**GENERAL ASSEMBLY OF THE STATE OF TENNESSEE
FISCAL REVIEW COMMITTEE**

320 Sixth Avenue, North – 8th Floor
NASHVILLE, TENNESSEE 37243-0057
615-741-2564

Rep. Charles Curtiss, Chairman
Representatives

Harry Brooks Mary Pruitt
Curt Cobb Donna Rowland
Dennis Ferguson David Shepard
Frank Niceley Curry Todd
Craig Fitzhugh, *ex officio*
Speaker Jimmy Naifeh, *ex officio*

Sen. Don McLeary, Vice-Chairman
Senators

Mae Beavers David Fowler
Jim Bryson Steve Southerland
Steve Cohen
Douglas Henry, *ex officio*
Lt. Governor John S. Wilder, *ex officio*

M E M O R A N D U M

TO: The Honorable Dave Goetz, Commissioner
 Department of Finance and Administration

FROM: Charles Curtiss, Chairman *cc*

DATE: December 13, 2006

SUBJECT: **Contract Comments**
 (Contract Services Subcommittee Meeting 12/12/06)

RFS# 331.04-002

Department: Education

Contractor: Xap Corporation

Summary: This vendor currently provides electronic transcript services for students in Tennessee. This amendment provides for the addition of unlimited access to test preparation courses for the ACT, SAT and GRE standardized tests along with a career planning module. The term of the contract remains the same, effective through April 30, 2010, and the maximum liability increases by \$364,593.

Maximum liability: \$3,731,158

Maximum liability with amendment: \$4,095,750

After review, the Fiscal Review Committee voted to recommend approval of the contract amendment.

cc: The Honorable Lana Seivers, Commissioner, Department of Education
 Mr. Robert Barlow, Director, Office of Contracts Review



**GENERAL ASSEMBLY OF THE STATE OF TENNESSEE
FISCAL REVIEW COMMITTEE**

320 Sixth Avenue, North - 8th Floor
NASHVILLE, TENNESSEE 37243-0057
615-741-2564

Rep. Charles Curtiss, Chairman

Representatives

Harry Brooks
Curt Cobb
Dennis Ferguson
Frank Niceley
Craig Fitzhugh, *ex officio*
Speaker Jimmy Naifeh, *ex officio*

Mary Pruitt
Donna Rowland
David Shepard
Curry Todd

Sen. Don McLeary, Vice-Chairman

Senators

Mae Beavers
Jim Bryson
Steve Cohen
Douglas Henry, *ex officio*
Lt. Governor John S. Wilder, *ex officio*

David Fowler
Steve Southerland

M E M O R A N D U M

TO: The Honorable Dave Goetz, Commissioner
Department of Finance and Administration

FROM: Charles Curtiss, Chairman
Don McLeary, Vice-Chairman

DATE: June 21, 2006

SUBJECT: Contract Comments
(Contract Services Subcommittee Meeting 6/20/06)

RFS# 331.04-002

Department: Education

Contractor: Xap Corporation

Summary: This vendor currently provides electronic transcript services for students in Tennessee. This amendment provides for the addition of unlimited access to test preparation courses for the ACT and SAT tests. This amendment increases the maximum liability by \$433,362.

Maximum liability for 1st year: \$3,731,158

Maximum liability if extended for full 4 years: \$4,164,520

After review, the Contract Services Subcommittee voted to recommend approval of the contract amendment, pending the requested Attorney General Opinion, and with the stipulation that the Department add benchmarks to the amendment. The Fiscal Review Committee did not act on the recommendation due to lack of a quorum.

cc: The Honorable Lana Seivers, Commissioner, Department of Education
Mr. Robert Barlow, Director, Office of Contracts Review



STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
6th FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

PHIL BREDESEN
GOVERNOR

RECEIVED
DEC 06 2006
FISCAL REVIEW

LANA C. SEIVERS, Ed.D.
COMMISSIONER

TO: Leni Chick, Fiscal Review Committee
FROM: Lana C. Seivers, Commissioner *Lana C. Seivers*
DATE: December 5, 2006
RE: Request to appear before Fiscal Review Committee regarding Non-Competitive Amendment to contract FA-05-16382-00

Please consider the enclosed information regarding a request for Non-Competitive Amendment to contract FA-05-16382-00 with Xap Incorporated.

The proposed amendment will allow for the additional deliverables of the following:

- Web-based test preparation module for ACT, SAT, and GRE tests for college bound students
- Career planning module for students who are planning their post secondary education experience
- Clarification of items within the current contract

The cost for the addition of these two deliverables is \$364,592.00 over the remaining life of the contract for a total maximum liability of \$4,095,750.00.

This request was originally submitted for review in June 2006. This is a re-submission of that request.

Thank you for your consideration.

REQUEST: NON-COMPETITIVE AMENDMENT

CY06

0-20-00

#841

APPROVED per FRC recommendation

M. D. Goetz
Commissioner of Finance & Administration

Date: DEC 15 2006

EACH REQUEST ITEM BELOW MUST BE DETAILED OR ADDRESSED AS REQUIRED.

1) RFS #

331.04-002-05

2) State Agency Name :

Department of Education

EXISTING CONTRACT INFORMATION

3) Service Caption :

Electronic Transcripts

4) Contractor :

Xap Corporation

5) Contract #

FA-05-16382-00

6) Contract Start Date :

May 01, 2005

7) Current Contract End Date IF all Options to Extend the Contract are Exercised :

April 30, 2010

8) Current Total Maximum Cost IF all Options to Extend the Contract are Exercised :

\$3,731,158.00

PROPOSED AMENDMENT INFORMATION

9) Proposed Amendment #

1

10) Proposed Amendment Effective Date :

(attached explanation required if date is < 60 days after F&A receipt)

January 1, 2007

11) Proposed Contract End Date IF all Options to Extend the Contract are Exercised :

April 30, 2010

12) Proposed Total Maximum Cost IF all Options to Extend the Contract are Exercised :

\$4,095,750.00

13) Approval Criteria :
(select one)



use of Non-Competitive Negotiation is in the best interest of the state



only one uniquely qualified service provider able to provide the service

14) Description of the Proposed Amendment Effects & Any Additional Service :

The Tennessee Department of Education (TDOE), Tennessee Student Assistance Corporation (TSAC), and Tennessee Higher Education Commission (THEC) recently procured a solution from Xap Corporation to provide electronic transcript services for the students in Tennessee. The resulting system (see www.CollegeforTN.org) is designed especially for use in Tennessee and allows users (students in grades 8-12, parents, guidance counselors, GEAR Up professionals) to access college-planning services in the web-based portal through a single log-in and password.

TDOE, TSAC and THEC are seeking the proposed amendment to contract with Xap Corporation to add its web-based test preparation

(Test Prep) services for the ACT, SAT, and GRE test along with a career planning module to the current website with a total increase of \$364,592.00 to the maximum liability.

The Departments are also requesting to amend the current contract to more accurately reflect the current management stream. The Personnel within each Department has changed since the creation and execution of the original contract and the management roles have shifted. This amendment will allow for correction and/or further clarification of scope items.

The test preparation and career planning module would be seamlessly integrated into the www.CollegeforTN.org website and would be available to all Tennessee students in grades 8-12, as well as adults seeking to re-enter college via the GRE. The site has no user access fees associated and there is unlimited, twenty-four (24) hour access.

Specific and unique features of the Xap *test preparation module* include:

Tutorials and Practice Sessions: The Xap test preparation module features user-friendly tutorials for each subject area/question type on the SAT, ACT and GRE. For the ACT these are: English, Reading, Science, Pre-Algebra, Algebra, and Geometry. SAT tutorials cover: Sentence Completions, Grammar, Essay Writing, Reading, Arithmetic, Algebra, Geometry, and Data Analysis. The GRE course contains tutorials in: Arithmetic, Algebra, Geometry, Data Analysis, Antonyms, Analogies, Sentence Completions, and Reading. Each tutorial provides between 30 and 90 minutes of instructional material. Tutorials are easy-to-use and are designed so that students may stop mid-way through and resume their work later.

The module also includes practice sessions that are designed to reinforce test-relevant skills by applying concepts presented in the tutorials to simulated test questions. Practice sessions dynamically adapt to each user's ability level, so that the most advanced students encounter the most difficult questions and less advanced students view less challenging questions. Each multiple choice question has unique feedback for each possible answer, designed to encourage students by offering hints and suggestions (for incorrect responses) and explanations (for correct answers). The students' performance during practice sessions generates a percentile ranking for each category. Percentile rankings are updated continuously, allowing students to assess their performance on a real-time basis. Students can access a database of over 500 questions for the ACT, and a database of over 800 questions each for the SAT and GRE.

Sample Tests: Timed sample tests for the SAT and ACT give students an indication of their performance level and pinpoint strengths and weaknesses. These sample tests also help students familiarize themselves with question format and layout. These sample tests are provided at no cost to users.

Vocabulary Builder: One of the most popular features of the module is a vocabulary builder, designed to broaden a student's verbal skills. The Vocabulary Builder contains more than 1,600 words. Like the practice sessions, it adapts to each student's ability level: those students with extensive verbal skills will see more difficult words, and vice-versa. Once a student has "mastered" a word it is stored on an electronic flashcard available for subsequent review.

Coaching System: Students are also able to elect a parent, teacher, or counselor as "coach" who will be able to monitor the student's performance and receive e-mail updates about the student's progress. Coaches can also log-in and view detailed reporting information on the student's activity on the site.

Daily Content: The module also includes a question of the day for each test, as well as a word of the day. This daily content can be integrated into classroom teaching strategies to encourage student users to visit the site frequently. Students can also elect to have this content e-mailed to them if desired.

Spanish Translation: The module even contains a Spanish translation of all its ACT and SAT tutorials, so that Spanish-speaking students can reinforce test-relevant skills in their native language.

Test-taking Tips: The sites provide students with an interactive game that teaches guessing strategies, as well as tips on time and stress management.

Specific and unique features of the Xap *career planning module* include:

Self Assessment: This section of the module will provide users with the opportunity to perform and interest self assessment. The results indicate the user's Holland personality types, which can be self-evaluated by the user or used in connection with the Career Matching Assistant, which is explained below.

Career Matching Assistant: This section of the module allows users to select from several parameters, including interest areas, highest education level anticipated, career clusters, work environment, general work activities, and abilities. The results indicate prospective careers, with links to career details, including career descriptions as well as related academic programs and colleges offering those academic programs within Tennessee. Users can store their results and review, or revise their searches at a later time. In addition, the Career Planner will provide a list of careers for users to search and links to valuable resources, including internships and volunteer information.

Additional Services: Through this module, users can search for careers that match their interests, education levels, and abilities on the U.S. Department of Labor's national careers database. This module will also link to sites on the Internet that offer information and

background on careers, which include average salaries, and academic and training requirements.

15) Explanation of Need for the Proposed Amendment :

After the execution of the original contract that resulted from the RFP, personnel changes across the three Departments that are involved in this process forced project management changes. The original contract was authored prior to clarification of roles and responsibilities. This Amendment will allow for clarification of some of the project management issues as well as further clarification of some of the terms within the scope as more information has been made available as a direct result of the implementation of the project.

The addition of the test preparation and career planning modules to the current website is a natural progression in the scope of services to assist in meeting the project vision of providing students across the state with a broad avenue of access to Tennessee educational opportunities beyond high school. Due to our existing contract with Xap, choosing an alternative to host an online test preparation service could constrain our goals of achieving a "one-stop-shop" for all students to apply to college, send transcripts online and apply for financial aid. The main vision of this "one-stop-shop" is to measure gains in student access and participation in higher education opportunities across the state, without regard to socio-economic impacts or other factors. By using one source to provide these necessary services, all Tennesseans will benefit by the reduction of costs to the State, streamlining the process, and promoting one website for all students to use to access valuable information about post high school opportunities. The addition of the test preparation module will also allow the State to collect and analyze valuable data about student study habits, test preparation, and how these factors relate to actual test performance. By using Xap, these services would be delivered promptly, without conjecture of timelines or delays.

Cost increase for the addition of the test preparation and career planning modules is \$364,592.00 over the remaining life of the current contract.

16) Name & Address of Contractor's Current Principal Owner(s) :
(not required if proposed contractor is a state education institution)

Xap Corporation
3534 Hayden Avenue
Culver City, CA 90232

17) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

18) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

19) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

THEC has taken reasonable steps to evaluate online Test Preparation guides. There has been no real success in defining another system that properly integrates with the State's existing system, and offer the same depth provided by Xap. Alternatives would involve an external web link with Xap which could limit the productivity and access of the individual student. The original focus of the website was to allow students opportunity to gain greater access to higher education through convenient online access to submission of their transcripts and therefore provide students greater access to higher education, which is a main goal of this project and the Governor's intent.

THEC did not identify any providers that offered both a test prep and career planning module within one package.

The cost information of other online Test Preparation guides has been attached to this request for review. The cost comparison for 40,000 students per year is summarized below

Act Online Prep	Kaplan Test Prep	Xap
40,000/yr x \$20 x 4 yrs	40,000 x \$299 x 4 yrs	40,000/yr x 4 yrs
\$3,200,000.00	\$47,840,000.00	\$364,592.00

21) Justification for the Proposed Non-Competitive Amendment :

Governor Bredesen's interest in college entry test scores was recently noted in his budget hearings and how the scores have shown an improvement since the lottery's inception. He also added the state must do more to improve scores. Test preparation is a vital component to ensuring access to educational opportunities beyond high school for all Tennessee students and citizens.

Approximately 92% of Tennessee graduates take the ACT exam annually and, while the state's average ACT score has increased in recent years, Tennessee's scores are still below the national average. The inclusion of the test prep module has the potential to increase ACT scores and provide students, across the state, greater access to a college education.

The Xap test preparation (Test Prep) and Career Planning modules level the playing field by providing these services to all socio-economic demographics. The test preparation and career planning modules can be included as part of a school's curriculum or as a stand-alone tool used by other college-readiness programs.

Test Prep is:

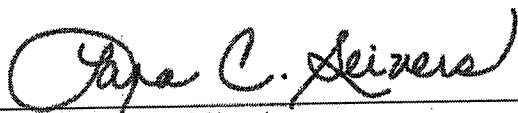
Integrated Solution – As the provider of the www.CollegeforTN.org portal, Xap can ensure the State of seamless integration of test prep within the portal. Seamless integration allows user profile data to be used across all modules, reducing data entry burden on users and ensuring greater accuracy of data across the system for TDOE, TSAC and THEC.

Experience – Xap Corporation has demonstrated experience providing comprehensive ACT, SAT and GRE test prep services, with no individual user fees, via statewide college-planning portals. Xap has designed and integrated test preparation services into the statewide college-planning portals in: North Carolina, Georgia, California, Wisconsin, Texas, and Utah. Xap Corporation is also under contract to design, develop and host a statewide test preparation service for the state of Oklahoma.

Results – Nearly 300,000 student accounts were created on Xap's test preparation services in calendar year 2005. In Pennsylvania, 63 seventh and eighth grade students attempting to qualify for a national gifted and talented program used the Xap test preparation service as part of a preparation program before taking the SAT. The student's total SAT scores were related to the amount of time spent studying on the site; linear regression models showed that students scored an additional 15 points per hour spent on the site, even after controlling for the effects of grade level, gender and pre-test scores.

REQUESTING AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR—signature by an authorized signatory will be accepted only in documented exigent circumstances)



Agency Head Signature

Date



PHIL BREDESEN
GOVERNOR

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
6th FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

LANA C. SEIVERS, Ed.D.
COMMISSIONER

TO: Robert Barlow, Office of Contracts Review
FROM: Lana C. Seivers, Commissioner *LCS*
DATE: December 5, 2006
RE: Request for Non-Competitive Amendment to contract FA-05-16382-00

Please consider the enclosed information regarding a request for Non-Competitive Amendment to contract FA-05-16382-00 with Xap Incorporated.

The proposed amendment will allow for the additional deliverables of the following:

- Web-based test preparation module for ACT, SAT, and GRE tests for college bound students
- Career planning module for students who are planning their post secondary education experience
- Clarification of items within the current contract

The cost for the addition of these two deliverables is \$364,592.00 over the remaining life of the contract for a total maximum liability of \$4,095,750.00.

This request was originally submitted for review in June 2006. This is a re-submission of that request based on the identification of a new funding stream.

Thank you for your consideration of this request.

CC: Dr. Timothy K. Webb
Assistant Commissioner

C O N T R A C T S U M M A R Y S H E E T

8-8-05

RFS # 331.04-002-05		Contract # FA-05-16382-01	
State Agency Department of Education		State Agency Division Technology	
Contractor Name XAP CORPORATION		Contractor ID # (FEIN or SSN) <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- V954610552-00	
Service Description Electronic Transcripts			
Contract Begin Date May 01, 2005	Contract End Date April 30, 2010	SUBRECIPIENT or VENDOR? Vendor	CFDA # See Supplement Form

Mark, if Statement is TRUE

<input type="checkbox"/> Contractor is on STARS as required			<input type="checkbox"/> Contractor's Form W-9 is on file in Accounts as required		
Allotment Code 331.04	Cost Center var	Object Code 083	Fund 25	Funding Grant Code n/a	Funding Subgrant Code n/a
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2005	\$0.00	\$0.00	\$5,000.00	\$0.00	\$5,000.00
2006	\$0.00	\$0.00	\$1,382,333.00	\$0.00	\$1,382,333.00
2007	\$31,697.84	\$0.00	\$716,731.84	\$0.00	\$748,429.68
2008	\$0.00	\$0.00	\$793,971.98	\$0.00	\$793,971.98
2009	\$0.00	\$0.00	\$808,077.16	\$0.00	\$808,077.16
2010	\$0.00	\$0.00	\$357,938.18	\$0.00	\$357,938.18
TOTAL:	\$31,697.84	\$0.00	\$4,064,052.16	\$0.00	\$4,095,750.00

OCC RELEASED

JUN 15 2007

TO ACCOUNTS

— COMPLETE FOR AMENDMENTS ONLY —

FY	Base Contract & Prior Amendments	THIS Amendment ONLY	State Agency Fiscal Contact & Telephone # John Sharp - 615-532-1658
2005	\$5,000.00	\$0.00	State Agency Budget Officer Approval <i>John F. Sharp 5-25-07</i>
2006	\$1,382,333.00	\$0.00	
2007	\$685,034.00	\$63,395.68	
2008	\$690,457.00	\$103,514.98	
2009	\$701,456.00	\$106,621.16	
2010	\$266,878.00	\$91,060.18	
TOTAL:	\$3,731,158.00	\$364,592.00	Funding Certification (certification, required by T.C.A., § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)
End Date:	4/30/2010	4/30/2010	

Contractor Ownership

<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input checked="" type="checkbox"/> NOT minority/disadvantaged
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—	

Contractor Selection Method

<input checked="" type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method
<input type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Government	<input type="checkbox"/> Other

Procurement Process Summary

Enter Procurement Summary Information Here

RECEIVED

CONTRACT SUMMARY SHEET SUPPLEMENTAL SCHEDULE

Contract Number		FA-05-16382-00					
Fiscal Year		2005					
Allotment Code	Cost Center	Object Code	Fund	Grant Code	Subgrant Code	CFDA #	Amount
331.04	23601	083	25	N/A	N/A	N/A	\$5,000.00
Fiscal Year	2006						
331.04	23601	083	25	N/A	N/A	N/A	\$1,382,333.00
Fiscal Year	2007						
331.04	23601	083	25	N/A	N/A	N/A	\$748,429.68
Fiscal Year	2008						
331.04	23601	083	25	N/A	N/A	N/A	\$793,971.98
Fiscal Year	2009						
331.04	23601	083	25	N/A	N/A	N/A	\$808,077.16
Fiscal Year	2010						
331.04	23601	083	25	N/A	N/A	N/A	\$357,938.18
TOTAL							\$4,095,750.00

**AMENDMENT # 01
TO CONTRACT FA-05-16382-00**

This Contract, by and between the State of Tennessee, DEPARTMENT OF EDUCATION, hereinafter referred to as the State, and XAP CORPORATION, hereinafter referred to as the Contractor, is hereby amended as follows:

1. Add the following to Section A.I.

A.I.a. Definitions:

1. State Administrator – personnel representing the Tennessee Department of Education

2. Add the following to Section A.II.

C. 3rd Deliverable – by January 1, 2007

- a. Provide functionality for career planning, translating the student's interests to career tracks, describing careers and providing associated in-state starting salaries, providing an updated list of the fastest growing career fields in Tennessee, specifying the level of education required for careers of interest, listing related academic programs, and listing institutions offering those academic programs.
- b. Provide unlimited access to comprehensive interactive test preparation courses for the SAT, ACT, and GRE standardized tests.

3. Add the following to Section A.III. :

C. 3rd Deliverable – by January 1, 2007

The Contractor will provide a Career Information module that provides the following functionality:

1. A Career Self Assessment module that will provide Links to one or more assessment surveys designed to help the students identify their interests, skills, values, and personality.
2. A Career Matching Assistant will suggest to students which careers best match their respective interests, skills, values, and preferences. Students will have the ability to select specific preferences within a set of parameters maintained by the Contractor. Based on the expressed preferences of a student, the Career Matching Assistant will provide a list of careers from a database that best meet the expressed preferences. A Link will be established from the name of the career appearing on the list to a page providing information about the career.
3. A List of Careers module will provide a comprehensive listing of careers organized by cluster as determined by the U.S. Department of Labor. The list will highlight careers projected to be in future demand in Tennessee. The information presented for each career shall include a description of the career and tasks involved; general work activities; the national average salary for the career, the experience, education and training required; a list relating careers and college majors; and a list of post-secondary institutions that offer those majors.
4. Students will be provided with Links to state-specific job, volunteer and internship sites.
5. A My Mentor Careers section that will allow students the ability to save career profiles, majors of interest, skills, strengths and abilities, career-exploration activities and an action plan.

The Contractor will provide a Test Preparation module (TPM) that provides the following functionality:

1. A series of user-friendly tutorials for the SAT, ACT, and GRE standardized tests, covering the subject areas and question types currently presented on those tests. Each tutorial will contain at least 12 screens of information (typically representing between 30 and 90 minutes of study time) which can be interrupted at any point, saved, and resumed at a later time. For the SAT, the tutorials will cover Sentence Completions, Reading, Arithmetic, Algebra, Geometry, and Data Analysis. For the ACT, the tutorials will cover English, Reading, Science, Pre-Algebra, Algebra, and Geometry. For the GRE, the tutorials will cover Arithmetic, Algebra, Geometry, Data Analysis, Antonyms, Analogies, Sentence Correction, and Reading.
 2. Practice sessions that are designed to enable students to reinforce test relevant skills by applying concepts presented in the tutorials to simulated test questions. The TPM will offer at least once practice session (having no less than twenty (20) questions) for each subject area covered in the tutorials. Practice sessions will dynamically adapt to each student's ability level. The most advanced students will be presented with the most difficult questions and the less advanced students will see less challenging questions. For each multiple choice answer, students will be provided with a unique feedback for each possible answer. TPM will offer hints and suggestions for incorrect responses and explanations for correct answers. Percentile rankings in each category will be continuously updated to allow students to assess their performance on a real-time basis
 3. A timed sample diagnostic test that will help students identify strengths and weaknesses in taking standardized tests and assist students in constructing a directed study program.
 4. A vocabulary builder designed to assist students in broadening their vocabulary. The students will be presented a word with five possible definitions, from which the students will make their selection. If a student's response is correct, the word will be stored in an electronic flashcard for subsequent review, and another word will be provided to the student. If the student's response is incorrect, the selected word will be crossed out, and TPM will present the word that matches the student's selection. The student will have another opportunity to select the correct definition of the presented word. Vocabulary builder also dynamically adapts to each student's ability level.
 5. Strategies for time and stress management when taking the standardized tests and an interactive game to teach guessing strategies
 6. A question of the day related to each of the three standardized tests. TPM question of the day will draw from a pool of over twelve hundred (1200) questions.
 7. A word of the day to supplement the vocabulary builder. TPM word of the day will draw from a pool of over fifteen hundred (1500) words. The student will have the option to be notified by e-mail of the word of the day.
4. Delete Section A.III.B.1. in its entirety and replace it with the following:
- A.III.B.1. Assistance to prospective students, parents and counselors with information about student aid, school catalogs, and a minimum of twenty (20) and a maximum of thirty five (35) on-line applications that will help facilitate the selection of schools that correspond to their personal preferences and skills. Links outside the vendor supplied application will only be for additional information purposes for the student.
5. Delete Section A.IV.3. in its entirety and replace with the following:
- A.IV.3. An overall State administrator (TDOE Personnel) will be designated to approve log-ons at the high school level and assist high schools with problems. The student will not need approval, but will be authenticated and will have general access to only his/her record. The Contractor will supply the appropriate permissions to all user levels.

AMEND
010102

6. Delete Section A.V.3. in its entirety and replace with the following:

A.V.3. Provide training to THEC, TSAC, and TDOE for data importing and manipulation and using the vendor supplied application. The training will be in the "Train the Trainer" format as THEC and TDOE will then be responsible for training at the high school and higher education levels. The initial training should be completed by June 15, 2005. Additional training will be scheduled in August of 2005 for the roll-out of the second deliverable. It is the responsibility of the Contractor to provide to THEC, TSAC, and TDOE the training on the application.

7. Delete Section A.VI.2. in its entirety and replace it with the following:

A.VI.2. System outages / broken links must be reported to the THEC program manager within one (1) hour of problem identification. The service must be restored within twelve (12) hours from the event and the vendor must then communicate to the designated THEC program manager that all systems / broken links are restored.

8. Delete Section C.1. in its entirety and replace with the following:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Four Million Ninety Five Thousand Seven Hundred Fifty Dollars and No Cents (\$4,095,750.00). The Service Rates in Section C.3. shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contract or during any period of this Contract.

9. Delete Section C.3. in its entirety and replace with the following:

C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

(The additional support services rates below shall constitute rate caps applicable only to any possible amendment and shall not apply to any deliverables specifically required in year one of the contract. Any such amendment shall specify applicable rates, not to exceed those detailed below.)

SERVICE UNIT/MILESTONE	AMOUNT
Year 1	
Deliverable 1 - July 15, 2005 - Up to 70,000 transcripts to TSAC	\$500,000.00/deliverable
Deliverable 2 - Sept. 1, 2005 - Financial aid options & support	\$450,000.00/deliverable
Year 2	
Deliverable 1 - December 2005 - Up to 80,000 transcripts to	\$150,000.00/deliverable

AMEND
010102

Handwritten notes:
 5/25/07
 5/25/07
 5/25/07

TSAC	
- June 2006 - up to 80,000 transcripts to TSAC	\$150,000.00/deliverable
Deliverable 2 - Annual fee for up to 350,000 students	\$290,000.00/deliverable
Deliverable 3 - January 1, 2007 - Career Center and Test Prep Modules	\$ 46,229.00/deliverable
Year 3	
Deliverable 1 - December 2006 - Up to 90,000 transcripts to TSAC	\$154,500.00/deliverable
- June 2007 - Up to 90,000 transcripts to TSAC	\$154,500.00/deliverable
Deliverable 2 - Annual fee for up to 400,000 students	\$272,200.00/deliverable
Deliverable 3 - Annual fee for up to 400,000 students	\$103,000.00/deliverable
Year 4	
Deliverable 1 - December 2007 - Up to 100,000 transcripts to TSAC	\$159,135.00/deliverable
- June 2008 - Up to 100,000 transcripts to TSAC	\$159,135.00/deliverable
Deliverable 2 - Annual fee for up to 450,000 students	\$279,616.00/deliverable
Deliverable 3 - Annual fee for up to 450,000 students	\$106,090.00/deliverable
Year 5	
Deliverable 1 - December 2008 - Up to 100,000 transcripts to TSAC	\$163,909.00/deliverable
- June 2009 - Up to 100,000 transcripts to TSAC	\$163,909.00/deliverable
Deliverable 2 - Annual fee for up to 500,000 students	\$287,254.00/deliverable
Deliverable 3 - Annual fee for up to 500,000 students	\$109,273.00/deliverable
Train the Trainer Classes:	
Year 1	\$2500.00/class
Year 2	\$2500.00/class
Year 3	\$2750.00/class
Year 4	\$2750.00/class
Year 5	\$2750.00/class
Year 2 Additional Support Services:	
Web Developer	\$85.00/hour
Programmer	\$135.00/hour
Project Manager	\$200.00/hour
Year 3 Additional Support Services:	
Web Developer	\$85.00/hour
Programmer	\$135.00/hour
Project Manager	\$200.00/hour
Year 4 Additional Support Services:	
Web Developer	\$90.00/hour
Programmer	\$145.00/hour
Project Manager	\$210.00/hour
Year 5 Additional Support Services:	
Web Developer	\$90.00/hour
Programmer	\$145.00/hour
Project Manager	\$210.00/hour

AMEND
010102

The Contractor shall submit monthly invoices, in form and substance acceptable to the State will all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

10. Add the following as Section E.15.

E.15. Agreement for Confidentiality as Agent of the State. The Contractor will comply with all federal and state laws regarding the confidentiality of personally identifiable student information and will execute the Confidentiality Agreement incorporated in this Contract as Attachment A.

11. Add Attachment A as referenced in Section E.15.

The other terms and conditions of this CONTRACT not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF:

XAP CORPORATION:

Elizabeth Dietz 3/22/07
Elizabeth Dietz, Chief Executive Officer Date

DEPARTMENT OF EDUCATION:

Lana C. Seivers 4/2/07
Lana C. Seivers, Commissioner Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr. 1KW JUN 11 2007
M. D. Goetz, Jr., Commissioner Date

COMPTROLLER OF THE TREASURY:

John G. Morgan 6/13/07
John G. Morgan, Comptroller of the Treasury Date

ATTACHMENT A

Contract # FA-05-16382

CONFIDENTIALITY AGREEMENT

Whereas, the Tennessee Department of Education, hereinafter referred to as "State" has entered into a contract, "Contract" on May 1, 2005, as amended on January 1, 2007 with XAP Corporation, hereinafter referred to as "Contractor" for the provision of electronic transcript services, and

Whereas, The above referenced contract may require the limited disclosure by the State to Contractor of certain personally identifiable student information that is confidential under the Family Educational Rights and Privacy Act, hereinafter referred to as "FERPA".

Therefore, the State and Contractor hereby agree as follows:

1. Contractor, is authorized to have limited access to certain student information for the sole purpose of compliance with the requirements of the above referenced Contract. This student information shall include any information listed on a student's school transcript.
2. Contractor, as authorized representative of State, for the sole purpose of complying with the requirements of the above Contract, agrees to ensure all of its employees maintain the confidentiality of all student information in compliance with FERPA.
3. Contractor agrees to destroy any confidential student information it has possession of when it is no longer needed for purposes of fulfilling its obligations under the above referenced Contract.

<u>Lana C. Siver</u>	<u>4/2/07</u>
State	Date
<u>Elizabeth</u>	<u>3/22/07</u>
Contractor	Date

REVISED

010102

CONTRACT SUMMARY SHEET

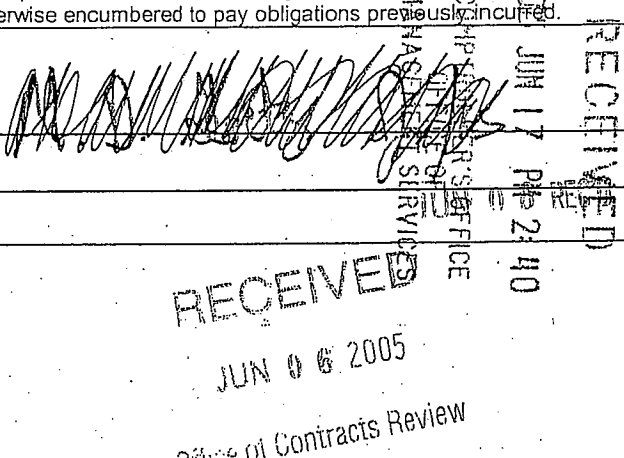
RFS Number:	331.04-002-05			Contract Number:	FA-05-16382-00		
State Agency:	Department of Education			Division:	Technology		
Contractor				Contractor Identification Number			
XAP CORPORATION				<input checked="" type="checkbox"/> V- <input type="checkbox"/> C-	V954610552-00		
Service Description							
Electronic Transcripts							
Contract Begin Date				Contract End Date			
May 01, 2005				April 30, 2010			
Allotment Code	Cost Center	Object Code	Fund	Grant	Grant Code	Subgrant Code	
331.04	23601	083	25	<input type="checkbox"/> on STARS	n/a	n/a	
FY	State Funds	Federal Funds	Interdepartmental Funds	Other Funding	Total Contract Amount (including ALL amendments)		
2005	\$0.00	\$0.00	\$5,000.00	\$0.00	\$5,000.00		
2006	\$0.00	\$0.00	\$1,382,333.00	\$0.00	\$1,382,333.00		
2007	\$0.00	\$0.00	\$685,034.00	\$0.00	\$685,034.00		
2008	\$0.00	\$0.00	\$690,457.00	\$0.00	\$690,457.00		
2009	\$0.00	\$0.00	\$701,456.00	\$0.00	\$701,456.00		
2010	\$0.00	\$0.00	\$266,878.00	\$0.00	\$266,878.00		
Total:	\$0.00	\$0.00	\$3,731,158.00	\$0.00	\$3,731,158.00		
CFDA #	na			Check the box ONLY if the answer is YES:			
State Fiscal Contact				Is the Contractor a SUBRECIPIENT? (per OMB A-133)			
Name: John Sharp Address: 710 James Robertson Pkwy 6th Floor, Andrew Johnson Tower Nashville, TN 37243 Phone: 615-532-1658				Is the Contractor a VENDOR? (per OMB A-133)			
				Is the Fiscal Year Funding STRICTLY LIMITED?			
Procuring Agency Budget Officer Approval Signature				Is the Contractor on STARS?			
				Is the Contractor's FORM W-9 ATTACHED?			
				Is the Contractors Form W-9 Filed with Accounts?			
COMPLETE FOR ALL AMENDMENTS (only)				Funding Certification			
	Base Contract & Prior Amendments	This Amendment ONLY	Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.				
END DATE →							
FY:							
FY:							
FY:							
FY:							
FY:							
FY:							
Total:	\$0.00	\$0.00					

Moving funds from
State to Interdepartmental.

JUL 11 2005

DIRECTOR OF ACCOUNTS

CONTRACT SUMMARY SHEET

RFS Number: 331.04-002-05		Contract Number: FA-05-16382-00	
State Agency: Department of Education		Division: Technology	
Contractor: XAP CORPORATION		Contractor Identification Number: V954610552-00	
		<input checked="" type="checkbox"/> V- <input type="checkbox"/> C-	
Service Description			
Electronic Transcripts			
Contract Begin Date: May 01, 2005		Contract End Date: April 30, 2010	
Allotment Code: 331.04	Cost Center: 23601	Object Code: 083	Fund: 25
		<input type="checkbox"/> on STARS	
Grant Code: n/a	Subgrant Code: n/a		
FY	State Funds	Federal Funds	Interdepartmental Funds
2005	\$5,000.00	\$0.00	\$0.00
2006	\$1,382,333.00	\$0.00	\$0.00
2007	\$685,034.00	\$0.00	\$0.00
2008	\$690,457.00	\$0.00	\$0.00
2009	\$701,456.00	\$0.00	\$0.00
2010	\$266,878.00	\$0.00	\$0.00
Total:	\$3,731,158.00	\$0.00	\$0.00
CFDA # na		Check the box ONLY if the answer is YES:	
State Fiscal Contact		Is the Contractor a SUBRECIPIENT? (per OMB A-133)	
Name: John Sharp Address: 710 James Robertson Pkwy 6th Floor, Andrew Johnson Tower Nashville, TN 37243 Phone: 615-532-1658		Is the Contractor a VENDOR? (per OMB A-133)	
		Is the Fiscal Year Funding STRICTLY LIMITED?	
Procuring Agency Budget Officer Approval Signature		Is the Contractor on STARS?	
		Is the Contractor's FORM W-9 ATTACHED?	
		Is the Contractor's Form W-9 Filed with Accounts?	
Funding Certification			
COMPLETE FOR ALL AMENDMENTS (only)		Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.	
Base Contract & Prior Amendments	This Amendment ONLY		
END DATE →			
FY:			
FY:			
FY:			
FY:			
Total:	\$0.00		

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF EDUCATION
AND
XAP CORPORATION**

This Contract, by and between the State of Tennessee, DEPARTMENT OF EDUCATION, hereinafter referred to as the "State" and XAP CORPORATION, hereinafter referred to as the "Contractor," is for the provision of electronic transcript services, as further defined in the "SCOPE OF SERVICES."

The Contractor is A FOR-PROFIT CORPORATION. The Contractor's address is:

3534 HAYDEN AVE.
CULVER CITY, CA 90232

The Contractor's place of incorporation or organization is Delaware.

A. SCOPE OF SERVICES:

I Project Vision

Tennessee Department of Education (TDOE), Tennessee Student Assistance Corporation (TSAC), and Tennessee Higher Education Commission (THEC) are seeking a solution that will provide a broad avenue of access to Tennessee educational opportunities beyond high school. This entails a system that could integrate currently operational services and consolidate existing products into one seamless solution; designed especially for use in Tennessee and allowing users access to the electronic portal through a single sign-on. This proposed system will have the capability for high schools and students to electronically transmit transcripts, to pre-populate the Free Application for Federal Student Aid (FAFSA), to match course work from Tennessee high schools against entrance requirements of Tennessee colleges and universities selected by the student, and enable students to plan for post-secondary education while applying for scholarships. All public high schools and higher education institutions will participate in this plan, including all community colleges. The State will encourage private high schools and higher education institutions participate in the program, but their participation will not be required.

II Expectations:

A. 1st Deliverable - by July 15, 2005

Facilitate the electronic exchange of transcript information from both public and private high schools in Tennessee to TSAC. The transcripts will be used by associated institutions in Tennessee, TDOE, TSAC, and THEC to determine eligibility for admissions to associated schools of their choice and for financial aid awards.

The users to be served by the first deliverable are as follows:

1. The High Schools / Guidance Counselors. High school representatives will transmit transcripts electronically using the vendor-supplied application; the transcripts will be uploaded to TDOE, TSAC, and THEC. These users will require secure log-in capabilities as well as the ability to select one or more transcript files to upload into the Xap Transcript Exchange ("Bulk Upload") for their respective school.

2. TDOE and TSAC and THEC. The transcript data from the Bulk Upload should be available to these users.

B. 2nd Deliverable - by September 1, 2005

Provide prospective students, parents, high school counselors and postsecondary admissions staff information on financial aid options available to each prospective student, matched to that student's particular skills and preferences.

Provide support to facilitate on-line application processing to ensure that the prospective students are successful in achieving enrollment in an institution that is matched to their skills and their preference.

The users to be served by the second deliverable are as follows:

1. High School Students. The students (9th to 12th grade) will access the vendor-supplied application to find college and university information, transmit electronic transcripts to higher education institutions, and apply for State and Federal financial aid.
2. Postsecondary Students. These students can submit transcripts electronically between and among the following:

--Postsecondary (2 year) to postsecondary (2 year) -- Once a postsecondary institution has uploaded the student's transcript data into the Xap Transcript Exchange, that student will be responsible for transferring transcript electronically to destination postsecondary higher education institution.

--Postsecondary (2 year) to postsecondary (4 year) -- Once a postsecondary institution has uploaded the student's transcript data into the Xap Transcript Exchange, that student will be responsible for transferring transcript electronically to destination postsecondary higher education institution

--Postsecondary (4 year) to postsecondary (4 year) -- Once a postsecondary institution has uploaded the student's transcript data into the Xap Transcript Exchange, that student will be responsible for transferring transcript electronically to destination postsecondary higher education institution.

The postsecondary institution will be responsible for providing the transcript data to the Xap Transcript Exchange in the TS130 file format or some other file format for which Contractor has created a parser to populate the transcript database.

3. High Schools. Electronic transcripts can be transmitted between one high school and another high school in an EDI TS130 HTML or generic file format that recipient school can print.

III Functional Requirements

The website and database must be a vendor-hosted solution. Website must use non-specific coding techniques or plug-ins and run on Internet Explorer Version 5.0 and higher and all W3C compliant browsers.

The web site will use a single sign-on and interface with each of the State's local school systems, all postsecondary institutions, the Tennessee Student Assistance Corporation (TSAC), Tennessee Department of Education (TDOE), and Tennessee Higher Education Institution (THEC). Information about the technical architecture of those systems will be made available upon request. At a minimum, the system will provide the following features:

A. 1st Deliverable -- July 15, 2005

An electronic transcript module that provides a full-service solution that provides software/tools for data extraction from the high schools Student Information Systems, data mapping, encryption, and secure transmission, in addition to providing "Train the Trainer" classes for TDOE, TSAC, and THEC on how to use the program. The vendor-supplied application will facilitate the exchange of transcript data from Tennessee high schools, both public and private, to TSAC. The vendor will be required to work with Tennessee's Statewide Student Management System and other vendors, to affect electronic transcripts on a statewide basis. The module must provide a capability enabling TN high schools to transmit transcripts to TSAC and to track receipt of those transcripts by institution. For ORAN, Horizon, and any other student management package not listed below, the Contractor must provide a secure web interface to allow manual entry of the data by the schools or by TSAC. The Contractor must electronically deliver transcripts for all other SIS packages listed. The current SIS packages being used in the State by public high schools are the following:

SSMS – Star Student
Chancery
ORAN
Power School
Sasi XP
Horizon

The State will provide to the Contractor the following by June 15th:

- 1) extracted transcript data from SSMS in the Contractor's specified file format;
- 2) a district contact to provide access to a Chancery/WinSchool/SMS system;
- 3) a district contact to provide access to a PowerSchool system for delivery of transcripts by September 1st, 2005.

For a list of which software each school district uses, go to
<http://www.state.tn.us/education/eis/eiscontacts.pdf>.

For a list of which school districts will be implementing the Statewide Student Management in subsequent school years, go to
http://www.state.tn.us/education/techssmspilots_1.pdf

1. The system must have ad-hoc query capabilities to produce reports generated by state administrators. The ad-hoc queries will consist of aggregate numbers such as: East Nashville transferred 450 on May 14th 2005, 450/450, one previous logon resulted in 0/0 transferred or from March 31st to May 20th there were 44,323 records uploaded across the state.
2. Data will be transmitted electronically to TSAC in one of the following ways: XML, flat file, or EDI. XML is the preferred method; however the institution will have the discretion of selecting which of the 3 methods they will use. No other data transfer (including PDF) are acceptable. For the high schools that are not able to transmit the transcripts electronically, the transcript will be mailed to TDOE and/or TSAC and then entered into the database by either TDOE or TSAC personnel.
3. The system must be able to Bulk Upload transcripts from the high school level. In addition, TDOE, TSAC, and THEC must have the ability to transmit transcript data to the vendor-hosted database.

Information about the technical architecture of the systems will be made available upon request. Confirmation of delivery is required when transferring electronically. This confirmation will be by the vendor-supplied application and will state the total transcripts transferred out of the possible total transcripts. Ex. 1/1 or 25/25.

B. 2nd Deliverable – September 1, 2005

A financial aid function module that enables prospective students to research and apply for financial aid for postsecondary education. This vendor-supplied application will be a "one stop shop" for college application, federal financial aid and state sponsored financial aid. First, the module must provide the capability for high school students to release transcripts to multiple institutions simultaneously and to track receipt of those transcripts by institution. This includes the capability for the student to transmit his/her transcript electronically from postsecondary to postsecondary institution, if uploaded in the Xap Transcript Exchange. The vendor-supplied application should calculate anticipated cost of postsecondary institution attendance, estimate family contributions, and provide financial aid options for which the prospective student may be eligible. The module must also be able to calculate estimated repayment requirements related to any loans incurred. These functions will all be contained within the vendor-supplied application. There will be no links to other websites with the aforementioned functionality. The system, at a minimum, must provide:

1. Assistance to prospective students, parents and counselors with information about student aid, school catalogs and twenty (20) on-line applications that will help facilitate the selection of schools that correspond to their personal preferences and skills. Links outside the vendor supplied application will only be for additional

information purposes for the student.

2. A summary function module should provide, within each personalized student account, assistance for each prospective traditional student to plan the specific curriculum to take in high school. The planning module will facilitate the student's ability to determine entry requirements and monitor progress toward meeting the requirements of selected postsecondary institutions. The summary function will be available, but not limited to, freshmen through senior high school students.
3. A data management function module should be available 24/7, to enable colleges and universities to continuously update and/or modify data and information displayed about the institution on the system. The tool should also allow colleges and universities to receive on-line admission applications and electronic transcripts, query transcripts received, and provide colleges a self-service tool that can be used to create user-defined flat file formats to facilitate the data extract from Xap's database and the data upload into systems such as the SCT Banner system or other similar system. Refer to web site:

http://www.sct.com/education/products/p_b_index.html

The module must have the ability to search a particular transcript within repository. The Student ID is the primary search criteria.

4. A function that provides electronic links to the TSAC web site and search engines that will facilitate each student obtaining estimates of the amount of grants, scholarships and loans available to them from both State and national sources. It must also include an electronic process for transcript transfer that will facilitate application for, and determination of, eligibility for those financial aid resources.
5. A planning timeline that will provide each individual with the specific sequence and deadline dates for taking necessary eligibility tests and for making timely application for the various financial aid resources available.
6. The Peterson's scholarship database, the Contractor's current provider of such information, or any nationally recognized successor third-party provider of such information will be made available. The system should also include informational links to institutional aid awards as well as private aid awards that are available.
7. A data transfer utility that enables certain basic elements of the Free Application for Federal Student Aid (FAFSA) to be pre-populated, pending approval by the U.S. Department of Education.
8. The system must have ad-hoc query capabilities to produce reports by state administrators. The queries must be able to provide aggregate numbers mentioned in Section III.A.4 of the Scope of Services
9. No fees are assessed to students during this process.
10. During data entry, ensure that all mandatory data items are captured and prevent acceptance of inconsistent or invalid data.
11. A webpage of Frequently Asked Questions (FAQ's) is required to help minimize the amount of support questions and to ease user experience. This page will be listed under a support heading.

IV System Requirements

1. All technical and functional requirements shall comply with applicable Federal and State Regulations.
2. A comprehensive security plan.
 - a. Security-related documentation should be coordinated with the general support system and/or network manager(s) to ensure that adequate application and installation documentation are provided to ensure continuity of operations.

- b. Controls must be designed to permit only authorized access to or within the vendor-supplied application, to restrict users to authorized transactions and functions, and/or to detect unauthorized activities (e.g., access control lists).
 - c. Must have capability to establish an Access Control List or register of the users and the types of access they are permitted. Contractor shall make Access Control Lists available to TSAC.
 - d. Vendor supplied application/program users must be restricted from accessing the operating system, other applications, or other system resources not needed in the performance of their duties.
 - e. Controls are required to detect unauthorized transaction attempts by authorized and/or unauthorized users.
 - f. Mechanisms are required to monitor consecutive failed access attempts (e.g. incorrect password).
 - g. Audit trail mechanisms must be in place for the system. In general, an event record should specify: Type of event; When the event occurred; User ID associated with the event; and Program or command used to initiate the event. Retention should be valid for 90 days after a transaction occurrence.
 - h. Fully encrypt all data sent via the Internet using 128 bit secure socket layer (SSL).
 - i. User passwords should expire every 90 days. The User should be given 5 grace logins prior to their password actually expiring.
 - j. The user session should automatically expire after 30 minutes of no activity.
3. An overall State administrator (TSAC personnel) will be designated to approve log-ons at the high school level and assist high schools with problems. The student will not need approval, but will be authenticated and will have general access to only his/her record. The vendor will supply the appropriate permissions to all user levels.

V. Training

- 1. Provide an on-line system user manual for the Control Center.
- 2. Provide an on-line help utility with help on the screen, worded so that it will be useful for end-users and technical staff.
- 3. Provide training to THEC, TSAC, and TDOE for data importing and manipulation and using the vendor-supplied application. The training will be a "Train the Trainer" format as TSAC will then provide training to the high schools and higher education institutions. The initial training should be completed by June 15, 2005. Additional training will be scheduled in August for the roll-out of the second deliverable. It is the responsibility of the vendor to provide to THEC, TSAC and TDOE training for the application.

VI. Customer Support

- 1. There will be a 2-tier customer support structure. TSAC will provide Tier 1 support to all end users and TSAC will provide a customer support phone number and email address for this purpose. For issues/questions that can not be resolved by TSAC, then the vendor will supply Tier 2 support for escalated issues. The vendor must establish a phone number for direct support to TSAC. Tier 2 support must be available Monday - Friday, 8:30 am - 8:30 pm Central Time Zone. All Tier 2 issues require a 4 hour response time to TSAC and TSAC will communicate back to the end user.
- 2. System outages/broken links must be reported to the TSAC administrator within one (1) hour of problem identification. The service must be restored within 12 hours from the event and the vendor must then communicate to the designated TSAC administrator that all systems/broken links are restored.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on May 1, 2005 and ending on April 30, 2010. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Three Million Seven Hundred Thirty-One Thousand One Hundred Fifty-Eight Dollars and No Cents (\$3,731,158.00). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

(The additional support services rates below shall constitute rate caps applicable only to any possible amendment and shall not apply to any deliverables specifically required in year one of the contract. Any such amendment shall specify applicable rates, not to exceed those detailed below.)

SERVICE UNIT/MILESTONE	AMOUNT
Year 1	
Deliverable 1 - July 15, 2005 - Up to 70,000 transcripts to TSAC	\$500,000.00/deliverable
Deliverable 2 - Sept. 1, 2005 - Financial aid options & support	\$450,000.00/deliverable
Year 2	
Deliverable 1 - December 2005 - Up to 80,000 transcripts to TSAC	\$150,000.00/deliverable
- June 2006 - Up to 80,000 transcripts to TSAC	\$150,000.00/deliverable

Deliverable 2 – Annual fee for up to 350,000 students \$290,000.00/deliverable

Year 3

Deliverable 1 - December 2006 – Up to 90,000 transcripts to TSAC \$154,500.00/deliverable

- June 2007 – Up to 90,000 transcripts to TSAC \$154,500.00/deliverable

Deliverable 2 – Annual fee for up to 400,000 students \$272,200.00/deliverable

Year 4

Deliverable 1 - December 2007 – Up to 100,000 transcripts to TSAC \$159,135.00/deliverable

- June 2008 – Up to 100,000 transcripts to TSAC \$159,135.00/deliverable

Deliverable 2 – Annual fee for up to 450,000 students \$279,616.00/deliverable

Year 5

Deliverable 1 - December 2008 – Up to 100,000 transcripts to TSAC \$163,909.00/deliverable

- June 2009 – Up to 100,000 transcripts to TSAC \$163,909.00/deliverable

Deliverable 2 – Annual fee for up to 500,000 students \$287,254.00/deliverable

Train the Trainer Classes:

Year 1 \$2,500.00/class

Year 2 \$2,500.00/class

Year 3 \$2,750.00/class

Year 4 \$2,750.00/class

Year 5 \$2,750.00/class

Year 2 Additional Support Services:

Web Developer \$85.00/hour

Programmer \$135.00/hour

Project Manager \$200.00/hour

Year 3 Additional Support Services:

Web Developer \$85.00/hour

Programmer \$135.00/hour

Project Manager \$200.00/hour

Year 4 Additional Support Services:

Web Developer	\$90.00/hour
Programmer	\$145.00/hour
Project Manager	\$210.00/hour
Year 5 Additional Support Services:	
Web Developer	\$90.00/hour
Programmer	\$145.00/hour
Project Manager	\$210.00/hour

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least Thirty (30) days written notice before the effective termination date.

The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged

by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Dr. Tim Webb

DEPARTMENT OF EDUCATION

710 James Robertson Parkway
6th Floor
Nashville, TN 37243
Telephone Number: 615-532-1650
Fax Number: 615-532-3268

The Contractor:
Kara Petreccia
XAP CORPORATION
3534 Hayden Ave.
Culver City, CA 90232
Telephone Number: 310-842-9800
Fax Number: 310-842-9898

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Annual Report and Audit. The Contractor shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this Contract to the commissioner or head of the contracting agency, the Tennessee Comptroller of the Treasury, and the Commissioner of Finance and Administration. The annual report for any Contractor that receives five hundred thousand dollars (\$500,000) or more in aggregate federal and state funding for all its programs shall include audited financial statements. All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Contractor may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Contractor and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the *Audit Manual for Governmental Units and Recipients of Grant Funds* published by the Tennessee Comptroller of the Treasury. The Contractor shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Contractor shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the State Contracting Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.
- E.5. Performance Bond. Upon approval of the Contract by all appropriate State officials in accordance with applicable State laws and regulations, the Contractor shall furnish a performance bond in the amount equal to One million dollars (\$1,000,000) and shall cover the period May 1, 2005 to

April 30, 2007, and shall be renewed annually. For the period May 1, 2007 to April 30, 2010 the performance bond shall be reduced to five hundred thousand dollars (\$500,000.00), and shall be renewed annually, guaranteeing full and faithful performance of all undertakings and obligations under this Contract for the initial Contract term and all extensions thereof. The bond shall be in the manner and form prescribed by the State as referenced in Addendum A and must be issued through a company licensed to issue such a bond in the State of Tennessee.

The Contractor shall obtain the required performance bond in form and substance acceptable to the State and provide it to the State no later than May 20, 2005. Failure to provide the performance bond prior to the deadline as required shall result in contract termination.

In lieu of a performance bond, a surety deposit, in the sum of One million dollars (\$1,000,000) shall cover the period May 1, 2005 to April 31, 2007. For the period May 1, 2007 to April 30, 2010 the surety deposit shall be reduced to five hundred thousand dollars (\$500,000.00). The surety deposit may be substituted if approved by the State prior to its submittal.

E.6. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Proposal
- c. The Request for Proposal and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

E.7. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

E.8. Public Funding Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor relative to this Contract shall include the statement, "This project is funded under an agreement with the State of Tennessee." Any such notices by the Contractor shall be approved by the State.

E.9. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.

- E.10. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.11. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

- E.12. Date/Time Hold Harmless. As required by *Tennessee Code Annotated*, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

- E.13. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, et. seq., the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.

- E.14. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principles:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;

- b. have not within a three (3) year period preceding this Grant been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Grant had one or more public transactions (Federal, State, or Local) terminated for cause or default.

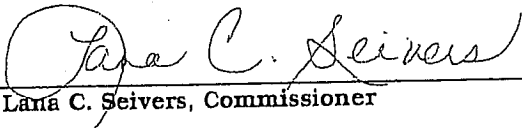
IN WITNESS WHEREOF:

XAP CORPORATION:


Alan Jacobson, Chief Financial Officer

5/19/05
Date

DEPARTMENT OF EDUCATION:


Lana C. Seivers, Commissioner

5-25-05
Date

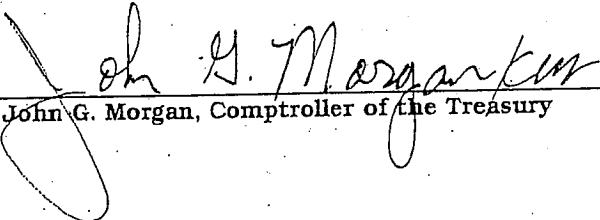
APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:


M. D. Goetz, Jr., Commissioner

6/17/05
Date

COMPTROLLER OF THE TREASURY:


John G. Morgan, Comptroller of the Treasury

6-21-05
Date



STATE OF TENNESSEE

FAX TRANSMITTAL

TO:	Bill Ezell Office for Information Resources	FAX # 532-0471
FROM:	Michael Timme, Contracts Coordinator	FAX # 253-5705
DATE:	5-25-05	
RFS#	331.04-002-05 (RFP # 331.25-002)	
RE:	OIR Procurement Endorsement Documentation for — Contract for Electronic Transcript Services with Xap Corporation (procured through RFP)	

NUMBER OF FAX PAGES (INCLUDING COVER):

The proposed service procurement documents referenced above are hereby forwarded to the Office for Information Resources (OIR) for review. The subject scope of services appears to include information systems services or information technology support activities.

This communication seeks to ensure that OIR is aware of the procurement and has an opportunity to review the matter to determine whether OIR is supportive. Please indicate OIR endorsement of the procurement described by signature below and return this communication at your earliest convenience (note the return FAX number above).

If you have any questions or concerns about this matter, please call Michael Timme at 532-8539.

Thank you for your help.

Attachment

OIR ENDORSES THE SUBJECT PROCUREMENT REQUEST

Office for Information Resources

Date

6/2/05